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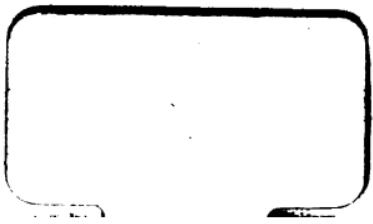
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RECITAL-BOOK.

“ Most persons who have gone through a Conveyancer’s chambers are in possession of a MS. Recital-Book; but to those who have not this convenience, and who expect to be largely occupied in drafting, I cannot too strongly recommend to possess themselves, if possible, of a book of this description. I often found, when I first commenced practising, that the very frame of the draft itself, which is what most puzzles a young practitioner, would be suggested by the related recitals in my Recital-Book; and I have repeatedly heard Equity Draftsmen, in an early stage of their practice, declare that the Recital-Book was the most useful book they had.”

[From the MS. Lectures of the late Professor J. J. PARK.]

THE
CONVEYANCERS'
Recital-Book;

WITH

EXPLANATORY

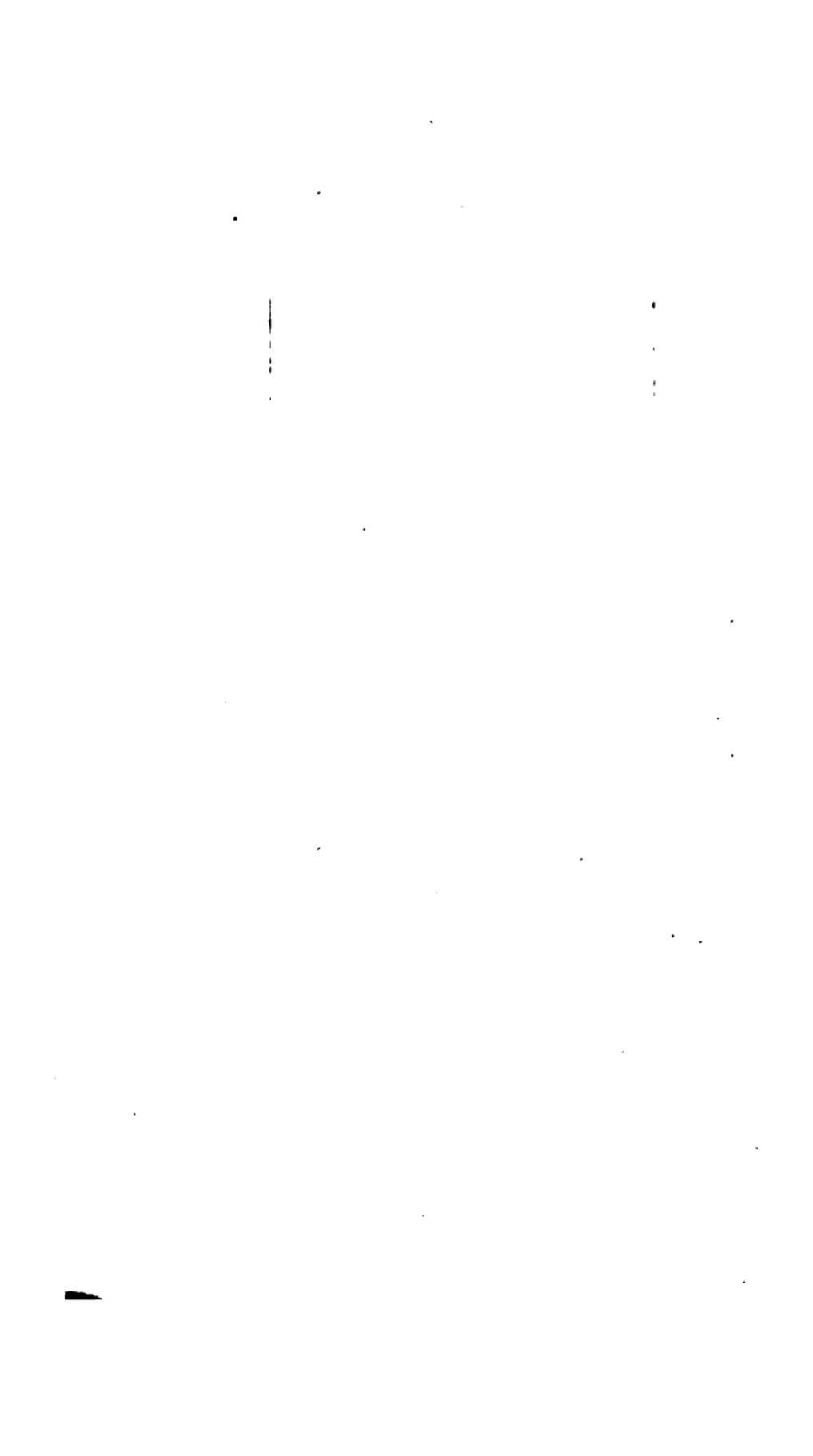
INTRODUCTION AND NOTES.

By THOMAS MARTIN, Esq.
OF LINCOLN'S INN.

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P R E F A C E.

THE design of the present Work is to lessen the difficulty of acquiring a knowledge of drafting, by suggesting, in the first place, such rules as may assist the student in determining *what* ought to be "*recited*;" and then by a methodical collection of various forms, to show *how* Recitals should be framed.

Important as is this subject, and perplexing as it often proves to the student and young practitioner, it has nevertheless been hitherto treated of so slightly and incidentally, that to the anxious and embarrassed inquirer, books afford little or no help.

True it is, that we already possess several voluminous collections of precedents, some of which

have obtained a deserved celebrity. They are guides, which no one who wishes to avoid being entangled in the cross-roads and bye-paths of practice, will hastily dismiss. And not the least of the advantages resulting from such works is, that they have given a sort of fixedness to the forms of conveyancing, producing an uniformity of practice that cannot be too highly prized. In none of these collections, however, do "Recitals" occupy the prominent place to which they are entitled: they are only subordinate to the main design, that of laying open the whole structure of established forms.

The materials of the present volume are principally derived from original sources; but it ought to be acknowledged, that, having the good fortune to possess the MS. collections of the late Professor J. J. Park, the labour of compilation was considerably lessened.

It can scarcely be necessary to apprise the reader, that he will not find in the following pages

every form of Recital that may be required in practice. New circumstances necessitate new forms ; and no one could frame, by any conceivable arrangement of words, such models as would be universally applicable.

It is hoped, however, that little difficulty will be felt in adapting the present to any variation either in facts or forms that may occur; though, after all, much will depend on that practical skill which can be gained only amidst the details of business. To acquire this skill must be the eager endeavour of the student; for, where it is wanting, however familiar he may be with forms, or however conversant with the rules of practice, they will be to him but as the instruments of an art unknown. While, however, he is intent upon thus arming himself for the conduct of affairs, it should not be forgotten that, unless practical knowledge is united with sound principles, or rather, unless they are so fused together that in every principle we can see a case of application, and in every case its

principle, the mind (to borrow a beautiful image,) will be too like a child's garden, where the flowers are planted without their roots.

In the Appendix is inserted an able lecture on Recitals, delivered by Professor Park, at King's College, London, only a few months before his untimely death. It will be found to contain much of that sort of information, (not to be prized the less because it is so rarely to be met with,) which, being gained only by experience in business, no one, unless nurtured in office, is competent to impart. To the student, such information is invaluable. As a lawyer, Professor Park deservedly ranked high—he was not unworthy of the master under whom he studied; * and one cannot but regret that his promising career should have been so soon cut short—that when about to reap the harvest of his hopes, the sickle should have fallen from his hand.

* Mr. Preston.

For the other articles inserted in the Appendix which treat of "Apportionment of Rent," of "Proving Pedigrees," of "Tenant-right of Renewal," and of the "Admissibility of Papers to Probate," the author is alone responsible.

4, OLD SQUARE, LINCOLN'S INN,

Trinity Term, 1834.



CONTENTS.

	PAGE
INTRODUCTION	3

TABLE OF TITLES.

PAGE		PAGE
58	Abatement	154
58	Abduction	157
58	Acceptance	157
58	Account	171
61	Act of Parliament	178
64	Action	180
68	Administration	180
70	Admittance	188
72	Advowson	188
74	Age	194
75	Agent	194
77	Agreement	197
84	Annuity	198
96	Application	198
98	Appointment	199
98	Apportionment	194
101	Apprenticeship	198
104	Approval	200
106	Arbitration	200
119	Arms	200
119	Assent	202
121	Assignment	202
123	Attorney	203
123	Auction	203
125	Award	207
126	Bankers	207
131	Bankruptcy	207
136	Bargain and sale	211
138	Bill in equity	216
138	Bill of exchange	219
140	Bill of sale	221
143	Bond	221
150	Boundaries	226
150	Certificate	227
151	Cesser	227
151	Charge	228
152	Codicil	229
152	Cognovit	229
158	Compensation	231
	Composition	154
	Consideration	157
	Contract for purchase	157
	Conveyance	171
	Covenant	178
	Courtesy	180
	Death	180
	Debenture	188
	Debt	188
	Decree	194
	Deed	194
	Descent	197
	Devise	198
	Disclaimer	198
	Dower	199
	Enfranchisement	194
	Exchange	198
	Executors	200
	Extent	200
	Felo de se	200
	Feeftment	202
	Fiat	203
	Fine	203
	Freight	206
	Grant	207
	Guardian	207
	Heirship	208
	Inclosure	211
	Indemnity	216
	Infant	219
	Inquisition	221
	Insolvent Debtor	221
	Institution and Induction	226
	Insurance	227
	Intestacy	227
	Issue	228
	Jointure	229
	Judgment	229
	Lease	231

CONTENTS.

	PAGE		PAGE
Lease and Release	241	Receipt	241
Letter of Attorney	246	Receiver	246
Letters Patent	247	Reconveyance	247
Licence	249	Recovery	249
Limitations	249	Reference	249
Loan	249	Release	249
Loss	256	Renewal	256
Lunacy	267	Rent-Charge	267
Marriage	282	Report	282
Merger	286	Reversion	286
Minority	288	Revocation	288
Mortgage	288	Sale	288
Naturalization	303	Sel-sin	288
Order of Court	304	Separation	288
Parcels	304	Settlement	288
Partition	306	Stock	288
Partnership	317	Suit	288
Payment	321	Surety	288
Pedigree	329	Surname	288
Petition	330	Surrender	288
Pleadings	380	Term of Years	288
Policy	380	Title	288
Portions	384	Transfer	288
Powers	348	Trusts	288
Presentation	349	Umpire	288
Probate	349	Uses	288
Production	352	Valuation	288
Promissory Note	353	Warrant of Attorney	288
Prosecution	353	Will	288
Protector	354	Writ	288
Purchase	358		
 APPENDIX	 451		
 INDEX	 491		

RECITAL-BOOK.



RECITAL-BOOK.

INTRODUCTION.

§ 1.

(1.) **I**N every Assurance, *i. e.* in every instrument, by means of which any interest or estate is created, or simply conveyed, there must necessarily be an alienor and alienee, as well as a subject-matter of alienation. The former are denominated *Parties*; the latter, *Parcels*. It is likewise plain that every act of alienation must originate from some motive. One parts with his estate for a sum of money, another, in consequence of the affection which he has for the alienee, and a third, in satisfaction of some debt: but whatever be the inducement, it is termed the *Consideration*. Some expressions must be employed for the purpose of evincing an intention to alienate; and these are to be found in what are technically called the *Operative Words*. In order to develope the cha-

racters and interests of the parties, or to preserve the continuity of title, or to put upon the instrument the evidences of its own validity, it is necessary to premise some explanatory statements; and these are called RECITALS. It is likewise necessary to declare what interest the alienee is to take in the parcels; and this is usually done by a clause, which has received the name of the *Habendum*. Besides, the numerous and various transactions between man and man require the insertion of various kinds of *Covenants* and *Conditions*; and the law, in order to prevent the intervention of fraud, has fenced round all acts of alienation with certain formalities, which must be observed before the assurance can be effectual; as, for instance, that a deed should be *Executed*, i. e. sealed and delivered.

(2.) From this rapid analysis, it will appear, that an Assurance is a somewhat complex instrument, compounded of many parts, some of which are essential, others merely formal; and it is conceived, that the best way of expounding this subject, would be to consider, in the first place, each ingredient apart from the rest, and then to treat of the various forms of

conveyance. By adopting this mode of procedure, much practical information might be imparted in a systematic form; and it would tend to fix the mind of the student on those cardinal points which more particularly demand his attention. Until, indeed, an accurate knowledge of the constituents of Assurances is obtained, it would be as idle to attempt to draw a conveyance, as to construct a watch when ignorant of the nature and use of the barrel, the verge, the pinions, the centre, contrate, and balance wheels, and so on. We might call the thing which we had fashioned a watch; but the probability is, that it would either give an incorrect notation of time, or stop.

To enter into a discussion of all the topics suggested by the analysis above given, would not be pertinent to the present inquiry: the main purpose of this work being, to furnish the student with such practical rules and illustrations, as may help him to a knowledge as to what Recitals should be introduced into Assurances, and how they ought to be framed. As, however, one principal use of Recitals is to show forth the characters and interests of the Parties, some observations on this last head will not

be irrelevant: besides, this is a subject which has been but very slightly treated of; though, if its importance be considered, it well deserves a full discussion.

(3.) It will often be found a very useful practice, if, before entering upon the actual composition of any draft, the student sketch out a plan of the instrument, carefully enumerating all the principal parts, and arranging them in a proper order; and in the mind, at least, this ought to be done by every one. He, indeed, is likely to be but a very blundering architect, who begins to build without having first considered every part of the ground-work of the building which is to be raised. The first inquiry will generally be, what *form* of conveyance is necessary? and to determine this, many and various circumstances must be attended to. Having fixed upon the form of conveyance, the next thing will be to inquire what, under the state of the contract and title, are to be its *constituent parts*. The draftsman should, on almost all occasions, be furnished with an abstract of title. Owing to a neglect of this rule, informal deeds have oftentimes been drawn; as, for instance, a release instead of an appoint-

ment; in some cases, the legal estate has been left outstanding, and, when the title came to be investigated, it has been discovered, that the property had devolved upon co-heiresses, labouring under the disabilities of marriage. That is surely but a short-sighted economy which, to save the expense of an abstract, would run the risk of rendering the title almost unmarketable.

(4.) It would lead us into inquiries too remote from the present subject, to advert to all the various circumstances that determine what form of conveyance is necessary. Some of them will be obvious to every one; as, for instance, that freeholds and leaseholds require different forms of conveyance: and though they widely differ from each other, yet, if desirable, both may be comprised in the same deed. Here we see that the *quantity* of estate affects the question: the *quality* of estate is also an important consideration. Joint-tenants in fee, for instance, are seised *per mie et per tout*;^{*} or, as it is exegetically expressed, each has an undivided moiety of the whole, not the whole of

* Litt. s. 288.

an undivided moiety; the consequence of which is, that one joint-tenant cannot convey his interest to the other by feoffment,* grant,† bargain and sale,‡ or devise,§ but must employ a release, which will operate *per mitter l'estate*.|| Neither can joint-tenants, tenants in common, or coparceners, effect an exchange between themselves until their estates have been actually severed.¶

§. 2.

(5.) To ascertain who are the necessary Parties to any contemplated conveyance, is one of the most important inquiries of the draftsman; and he can arrive at this knowledge by no other means than that of carefully investigating the abstract of title. An abstract of title is, in fact, *an epitome of the evidences of ownership*; and

* Co. Litt. 200, b; Touch. 205.

† *Eustace v. Seawen*, Cro. Jac. 696; 1 Vent. 78.

‡ Ib.

§ Litt. 280.

|| Co. Litt. 273, b, note 236; 2 Prest. Abr. 61.

¶ Touch. 292; *Attorney-General v. Hamilton and others*, 1 Madd. 223.

to ascertain who are the owners, these evidences must be consulted. Ownership, however, must be understood to signify, not merely a right or an interest which is *beneficial* to the person in whom it resides; for, from the peculiar nature of our system of property, imparted to it in a great measure by the clergy, who were versed in the Roman law, persons have oftentimes rights or interests which are mere creatures of technical law, conferring no advantage whatsoever. Thus it will be found, that, in relation to the same subject, one may have what is called the legal estate, and another the equitable, *i. e.* beneficial estate; and yet both are called, with propriety, "owners."

(6.) Of Parties, it may be observed, there are two distinct classes, *viz.* active and passive. *Active Parties* are those who convey some estate, or relinquish some right or interest, or who merely concur in the conveyance: as grantors, releasors, *cestuis que trust*, and the like. *Passive Parties* are those who receive anything: as grantees, releasees, and the like. In a deed-poll, a person becomes a party merely from the circumstance of being named as a person by

whom or to whom the grant is made.* Where, however, there is such a deed as is technically called a deed *inter partes*, *i. e.* a deed importing to be between the persons who are named in it as executing the same, and not as a deed-poll, which is usually addressed to "all people," then it is necessary, in order to make a person a party to the indenture, that he should be named in the deed as party to it, and not merely as party to the words of grant, as in the case of a deed-poll; and unless he is so named he cannot take any present estate in possession; because, as Lord Coke observes,† he is a stranger to the deed. This position is to be found in the "*Termes de la Ley*,"—a book of great antiquity and accuracy,‡ where the learned author observes, "that if an indenture be made between two as parties thereto in the beginning, and in the deed one of them granteth or letteth a thing to another that is not named in the beginning, he is not party to

* *Nurse v. Frampton*, 1 Salk. 214; S. C. 1 Ld. Raym. 28; and see 2 Prest. Conv. 394, 412.

† Co. Litt. 231, a.

‡ *Per Bayley*, J., 5 B. & C. 229.

the deed, nor shall take any thing thereby." The same doctrine is clearly laid down in several old cases, and was fully recognised by Lord Ellenborough.*

(7.) The subject of Parties is of much importance with reference to the covenants in the instrument; it being a settled doctrine that in an indenture *inter partes*, one who is a party cannot covenant with a stranger to the deed, though a mere stranger may covenant with a party, and if he seal the instrument, he will be bound.† If, however, the instrument be a deed-poll only, then the party may covenant with a stranger;

* *Scudamore v. Vandenstene*, 2 Inst. 673; S. C. Cro. Eliz. 56; *Gilby v. Copley*, 3 Lev. 138; *Cooker v. Child*, 2 Lev. 74; S. C. 3 Keb. 94; *Greenwood v. Tyler*, Hob. 314; S. C. Cro. Jac. 563; *Windmore v. Hobart*, Hob. 313. Most of the cases are collected in *Vin. Abr.* tit. 'Faits,' (C. a.) and examined by Mr. Preston in 2 *Conv.* 396—412. *Storer v. Gordon*, 3 M. & S. 322; and see *Barford v. Stuckey*, 2 B. & B. 337.

† *Scudamore v. Vandenstene*, 2 Inst. 673; S. C. Cro. Eliz. 56; *Salter v. Kidgley*, Carth. 76; S. C. Holt. 210; 1 *Show*, 58; *Storer v. Gordon*, 3 M. & S. 322; *Metcalf v. Rycroft*, 6 M. & S. 75; *Berkeley v. Hardy*, 5 B. & C. 355; S. C. 8 D. & R. 102; *Barford v. Stuckey*, 2 B. & B. 333; S. C. 5 J. B. Mo. 22; *Lord Southampton v. Brown*, 6 B. & C. 718.

but the name of the stranger must appear upon the deed.*

(8.) Although it is necessary that a person should be named as a party in an indenture *inter partes*, if it be intended that he should take any present estate in possession; yet where no such interest is to pass, but only an authority, as in the case of a letter of attorney, then the attorney need not be made a party.† In the case first referred to in the note below, Lord Coke, who was then Attorney-General, strenuously contended that the attorney was an essential party; and although the judgment of the Court went against him, yet it is observable that in the Institute,‡ published after this decision, he still adhered to the opinion that in an indented instrument, a letter of attorney to a stranger would be void. “ I have a great respect for

* *Cooker v. Child*, 2 Lev. 74; S. C. 3 Keb. 94, 115; *Clement v. Henley*, Roll. Abr. tit. ‘Faits,’ (F.) 2; *Lowther v. Kelly*, 8 Mod. 115; Com. Dig. tit. ‘Faits,’ (D.) 1; *Green v. Horne*, 1 Salk. 197; S. C. Comb. 219.

† *Moyle v. Ewer*, Cro. Eliz. 905; *Noy*, 49; *Dicker v. Molland*, 2 Roll. Abr. 8, 9; *Salter v. Kidgley*, 1 Show. 59; and see *Storer v. Gordon*, 3 M. & S. 322, 323.

‡ Co. Litt. 52, b. See *Rowe v. Power*, 2 New Rep. 12.

the memory of Lord Coke," said Lord Redesdale, "but I am ready to accede to an assertion made by some of his contemporaries, that he was too fond of making the law, instead of declaring the law, and of telling untruths to support his own opinions. Indeed, an obstinate persistance in any opinion he had embraced was a leading defect in his character."*

(9.) It will be observed that the rule requiring those to be named as parties who are to take an interest under an indenture *inter partes*, is confined to the case where any *present estate in possession* is to pass; for it is well established that a person may take a remainder,† or a use,‡ or the benefit of a trust,§ by a deed in which he is not named as a party.

* *Banbury Peerage Case*, Le Marchant, 437.

† Litt. a. 374; Co. Litt. 26, b; 231, a; 259, b; Doct. & Stu. 94; Lord Bacon's Works, vol. 13, p. 321. For other authorities, see Vin. Abr. tit. 'Faits,' (C. a.) pl. 5, 6, 14, 15, 'Grants,' (K. a.,) pl. 22; and see *Wright v. Cartwright*, Burr. 282, 285; *Doe dem. Potter and others v. Archer*, 1 Bos. & P. 531; 3 Prest. Abs. 41; 2 Prest. Conv. 394.

‡ *Tretheway v. Ellesden*, 2 Vent. 141; Lord Bacon's Works, vol 13, p. 321, 322; 2 Prest. Conv. 394, who cites *Sammes's case*, 13 Rep. 55.

§ 2 Prest. Conv. 394.

(10.) Besides those who are made parties on the ground that they are *known* to have some interest in the subject-matter of conveyance, or in the consideration-money, there is another class of parties consisting of persons who may *possibly* have an interest, and who therefore join "to make assurance doubly sure." Thus where an estate stands limited to uses to prevent dower, it is usual, in a conveyance of the fee, to make the trustee a party, even although the deed contains an appointment of the use as well as a release of the estate. "It is clear," observes Sir Edward Sugden,* "that, by virtue of his power, the appointor may convey the fee, yet I may say that it is almost the universal practice of the profession, not only to make the vendor exercise his power, but also to make the vendor and his trustee convey their interests in default of appointment. Sometimes a difficulty arises in procuring the concurrence of the trustee; and if the purchaser is satisfied that the power was well created, and is in existence, he may dispense with his concurrence; but if

* Sugd. V. & P. 201.

this be not the case, the purchaser ought to insist on the trustee joining." It is commonly understood, however, and there is an opinion of the late Mr. Butler to this effect, that a purchaser cannot insist on the concurrence of the trustee, unless the power is either suspended or destroyed.*

Again: in an assignment of a specific legacy

* In further confirmation of this view, I may adduce the following opinion, which was given by the late Professor J. J. Park, "It is sometimes required by a cautious or unwilling purchaser, that a trustee to prevent dower, or his heir at law, should be a party to a conveyance to a purchaser, although that conveyance likewise contains an appointment which over-reaches the estates limited subject thereto; and it was the opinion of Mr. Filmer and Mr. Booth, in the year 1748, that the purchaser was entitled to the concurrence of the trustee. See Cases and Op. vol. 2, p. 29. In modern practice, however, it has been usual to discourage as much as possible, the practice of making the trustee a concurring party; and several of the most eminent conveyancers of the present day uniformly omit the trustee in preparing conveyances on behalf of purchasers. In the case of an infant heir at law, my opinion is, that a purchaser, objecting to a title for want of his concurrence, would be required to show the invalidity of the power, and that if he could not do that, he would be compelled to take the title under an appointment and conveyance by the vendor alone."

by executors, it is usual to make the legatee a party; because, although an executor has an absolute power of disposing of the legacy, unless he has assented to it, yet as an assent may be implied from very slight circumstances, it is desirable that the legatee should join. Mr. Coote,* however, considers that if a purchaser or mortgagee shall *bond fide* deal with an executor within a reasonable time after the testator's death, and obtain possession of the muniments of title, a specific legatee would never be permitted, at law or in equity, to set up the executor's assent against the sale or mortgage.

On this head it may be added, that where a legatee's interest has been already assigned, the executor should not pay or transfer the legacy to the assignee without the concurrence of the legatee. It sometimes happens that where a married woman is entitled to a vested or contingent reversionary interest in personal property, an attempt is made during the coverture to assign it to a purchaser. If, however, the wife survive her husband before the reversionary interest falls into possession, this arrange-

* On Mortgages, 179, n., and see Sugd. V. & P. 540.

ment will not, of course, bind her.* She may, indeed, confirm the sale; and a trustee, upon obtaining a release of all claim from the widow, would be justified in paying the money to her assignee, the purchaser; but he ought also to require,—at least, this is sometimes insisted upon,—that the assignment, or an attested copy of it, should be delivered up to him.

And here it may be worth while to remark, that at one time it was usual, when the title depended on the fact of the disinherison of the heir, for a purchaser to require either that the will should be proved in equity against the heir, or that he should join in the conveyance. Now, however, these requisitions cannot be enforced. In one case,† Lord Chancellor King observed, “it is very proper that a will, disposing of lands, should be proved in equity, especially in the case of a modern will; but I cannot say this is absolutely necessary to make out the title, any more than it would be to prove a deed in equity, by which the estate

* *Purdew v. Jackson*, 1 Russ. 1; *Honner v. Morton*, 3 Russ. 65.

† *Colton v. Wilson*, 3 P. Wms. 190; S. C. 2 Eq. Ca. Abr. 680, pl. 10.

is settled from the heir at law after the ancestor's death. The will prevents and breaks the descent to the heir as much as a deed, and the hands of the witnesses to the will may be as well proved as those to a deed; and it is the better if, in the indorsement to the will, it is mentioned that the will is attested by three witnesses, who subscribed their names in the presence of the testator. Now as it would be no objection to a title if a modern deed, on which the title depended, was not proved in equity, why should it be so in the case of a will, where the same happens to be duly attested by three witnesses, whose names are mentioned to have been subscribed in the presence of the testator?" Lord Eldon also considered it as settled that a purchaser cannot insist upon the vendor's establishing a will against the heir.*

If there be any doubt as to the operation or validity of the will, then, of course, a purchaser would call for the concurrence of the heir; but in cases of this kind, the heir ought to be fully

* *Morrison v. Arnold*, 19 Ves. 673; 8 Bro. P. C. 145; and see *Bellamy v. Livesidge*, cited in Sugd. V. & P. 338, 7th ed.

informed as to the nature of his rights, and he ought not merely to confirm, but to convey the estate. It has been made a question, whether, where a person having devised an estate to trustees, upon trust to sell, and bequeathed the proceeds to certain legatees,—whether, under these circumstances, the heir at law and legatees are necessary parties to the conveyance to a purchaser. Upon this point being submitted to the late Mr. Butler, he expressed a decided opinion, that they were *not* necessary Parties, and that the devisees in trust and executors of the will could make a good title. Of this, indeed, there can hardly be any doubt; for, by the payment of the money to the executors, the purchaser would acquire the equitable fee, and by a conveyance from the devisees in trust, he would acquire the legal fee; and thus a complete title would be conferred.

Again: in the conveyance from the assignees of a bankrupt, it is usual to make the bankrupt a party; and by the late act, the Lord Chancellor is empowered, upon the petition either of the assignees or purchaser, to direct the bankrupt to join in the conveyance. If,

however, he refuse to join, the order of the court will have the same effect as if he had actually conveyed.*

(11.) It is also to be observed, that persons are sometimes made parties, not for the purpose of actually conveying any thing, but merely for *concurring* in the conveyance, either because their assent or concurrence is essential to the validity of the deed, or because they stand in such a relation to the transaction, that it is desirable there should be recorded evidence of their cognizance of it.

If, for instance, the consent of any person is required by the terms of a power or trust, it is proper, unless some particular mode of consenting is pointed out, that he should be made a party to the deed requiring his concurrence; for this will avoid any question that might possibly arise, as to whether a prospective or retrospective consent is sufficient. It is sometimes recommended that an express clause of consent should be inserted; but if the appointment is made with the consent of the proper person,

* 6 Geo. IV. c. 16, s. 280; and see *ex parte Thomas*, 1 M. & M. 64; S. C. 2 G. & J. 279.

(naming him,) "testified by his being a party to and sealing and delivering these presents," then any other declaration would be wholly useless.

Again: in the assignment of a legacy by the legatee, the executors (or administrator, if there be no executors,) should be made a party, for the purpose of assenting to the bequest; because, until the assent of the executors, or one of them, has been given, the legatee possesses only an *inchoate* interest: the whole personal estate, upon the death of the testator, vesting in the executors.*

Again: where there is a transfer of mortgage, it is usual to make the mortgagor a party; not that his concurrence is necessary to give validity to the deed, but, unless the mortgagor acknowledges what amount of principal and interest is owing, the assignee would take, subject to an account between mortgagor and mortgagee, concerning which he can have no cer-

* *Abney v. Miller*, 2 Atk. 598; 3 Atk. 240; *Farrington v. Knightley*, 1 P. Wms. 554; *Bennet v. Whitehead*, 2 P. Wms. 646; *Foley v. Burnell and another*, 4 Bro. P. C. 34; *Rose v. Bartlett*, Cro. Car. 293; Touch. 455.

tain knowledge. In the case referred to below,* the Lord Chancellor observed, that no conveyancer of established practice would recommend it as a good title, to take an assignment of a mortgage without making the mortgagor a party, and being satisfied that the money was really due. It sometimes happens, however, that the concurrence of the mortgagor cannot be obtained, and when such is the case, the mortgagee should enter into a covenant that the money alleged to be owing is in fact due, and a written notice of the assignment should be given to the mortgagor with the least possible delay.

Again: in the conveyance of an equity of redemption, the mortgagee should either be made a party, or have notice given him of the purchase; because, if he were to advance any further sum, without having had either express or implied notice of it, such sum would be a valid charge on the estate in the hands of a purchaser.†

* *Matthews v. Walwyn*, 4 Ves. 128.

† See *Shepherd v. Titley*, 2 Atk. 349; Sugd. V. & P. 695.

Again: if a lease be made of premises which are in mortgage, the mortgagee, as well as the mortgagor, ought to join in the lease as parties; for if the mortgagee do not concur, he may avoid the lease;* and it should be borne in mind, that the mortgagor cannot enforce a contract for such a lease, unless he first obtain the confirmation of the mortgagee, or a re-conveyance of the mortgaged premises.† It will not be irrelevant to remark, that when the mortgagee sells the mortgaged premises in pursuance of trusts, or by virtue of a power, a purchaser cannot insist on the mortgagor being made a party, even although he may have covenanted to join in conveyances; for such a covenant is a mere contract between the mortgagor and mortgagee.‡ If the power of sale is not incorporated in the mortgage deed, but appears only in a separate instrument of

* *Keech v. Hall*, Dougl. 21; *Thunder v. Belcher*, 3 East, 449; *Birch v. Wright*, 1 T. R. 378; *Doe dem. Roby v. Maisey*, 8 B. & C. 767; *Pope and another v. Biggs*, 9 B. & C. 245.

† *Costigan v. Hastler*, 2 Sch. & Lef. 160.

‡ *Corder v. Morgan*, 18 Ves. 344; *Clay v. Sharp*, App. 14, to Sugd. V. & P.; 18 Ves. 346, n.

defeazance, the purchaser cannot, perhaps, safely dispense with the concurrence of the mortgagor; and, indeed, in all cases his concurrence is desirable, and should, if possible, be obtained. It may be useful to add, that where one of two or more joint mortgagees is dead, and there is afterwards a reconveyance of the mortgaged premises, it is necessary that the representatives of the deceased mortgagee should be made parties to the deed, for the purpose of giving a discharge for that part of the principal and interest to which they have become entitled;* but if the money was plainly advanced by the mortgagees, in the character of partners, out of the copartnership funds, or if in the mortgage is inserted a clause, declaring, that in case of the death of either of the mortgagees, it shall be lawful for the survivor of them to receive the money, and give effectual receipts, then, under such circumstances,

* See 3 Ves. 631, where the Master of the Rolls observes, "If two persons join in lending money upon a mortgage, equity says it could not be the intention, that the interest in that should survive. Though they take a joint security, each means to lend his own and take back his own."

the concurrence of the personal representatives may be dispensed with.

Again: it is usual, in a jointure upon an infant, to make the parent or guardian an assenting party, for the purpose of raising the presumption, that the settlement is fair, and for the advantage of the jointress; and, indeed, it would seem, that this is almost, if not quite essential to the validity of a jointure of this kind, at least in equity; though, of course, such assent will not support a jointure which is not, properly speaking, a good legal or equitable jointure.*

Again: if a mortgagor is about to grant an annuity, to be charged on his encumbered estate, it is advisable to make the mortgagee a party to the grant, for the purpose of affecting him with notice of it; so that in the event of the mortgagee advancing any further loan, the second charge may not have precedence of the annuity.

(14.) With respect to the classification of

* On this subject, see *Corbet v. Corbet*, 1 Sim. & Stu. 612; S. C. 5 Russ. 257; *Carruthers v. Carruthers*, 4 Bro. C. C. 500; 1 Roper's Husb. and Wife, 486 n.

parties in the deed, the rule is, that the active parties should be named before the passive parties, the legal owner before the equitable owner, the freeholder before the termor, those having estates before those having mere rights; the vendor after all the other active parties, the purchaser before the parties on his behalf. If any of the parties act in various characters: e. g. as beneficial owners and trustees, or as copyholders and termors, they should be named as parties of as many parts as characters; and the same rule is to be observed if any of the parties are to take estates or receive benefits under different characters, or in different modes.

"There is," observes Mr. Preston,* "an accuracy in this mode of practice, since it opens to the mind the different operations of different parts of the deed. It also facilitates the remembrance of the different characters in which the parties are acting. But the rule of law does not require this, or any other like arrangement of the parties. Though A. and B. are parties

* 2 Prest. Conv. 419.

only in one clause, they may be grantors or grantees, covenantors or covenantees, either jointly or severally; and although they are named jointly, and the grant be to one of them separately, or the nomination of the other be a mere dead letter, still the deed will not in any manner be invalidated."

(15.) All the parties should be described by their true christian and surnames, places of abode, and additions, or, in the case of a corporate body, by the name of incorporation. If any of the parties have acquired a new or additional surname by licence, act of parliament, or reputation and habit, this should be stated in the deed in such a manner as to keep up the identity of the person throughout all the transactions that may afterwards appear upon the abstract.

With the same view, if a person, party to any former deeds, connected with the subject-matter of conveyance, have since changed his residence, this should be noticed in the description of him. These, and other particulars of a like nature, will readily suggest themselves, if the draftsman bear in mind, that an instrument should be fitted, not only to effect

the present purpose of the parties, but to form hereafter a constituent part of the evidences of ownership.

§ 8.

(16.) From the analysis already given, it appears that besides those essential constituents of an assurance without which no instrument can answer the definition of a conveyance, there are certain parts which are purely conventional and accidental. Among these must be reckoned Recitals. It would be foreign to the design of these introductory remarks to give an historical account of this subject; but it may be observed that Recitals are not, as some writers have supposed, of modern invention: they are found in our most ancient charters. Brief as were the land-bocs of the Anglo-Saxons—in some instances hardly larger than the palm of a man's hand,—yet they usually contained Recitals, stating the grantor's title, or certain circumstances connected with it; or were expressive of the uncertainty of life, or of the utility of committing transactions to writing. There is too in other parts of these land-bocs, and, indeed, in their

general construction, a striking resemblance to our present forms of conveyance; and if this were the place for such an inquiry, it could perhaps be shown, that the Norman lawyers, attached as they were to their own practice, did not extirpate the system of conveyancing which they found established, but only engrafted their own upon this ancient stock. And this may *in part* account for that verbosity in our forms which has been so much complained of. Anglo-Saxon terms were too barbarous for the comparatively polished Normans, and the language of the foreigner could not be understood by the native; so to render the forms of conveyance explicit to every one, a number of synomyms of Saxon and of Latin origin were employed. Leaving, however, these inquiries, we shall proceed, without further preliminary, to topics of a more practical bearing.

(17.) And first it may be remarked that it is very desirable for all instruments to be framed according to well-established forms. "At present," observes Mr. Tyrrell, "every word which is usually contained in a deed has received a settled construction; and the different parts are usually arranged in a similar order,

so that any one accustomed to the practice of conveyancing can, in an instant, refer to the words upon which any question may arise, and discover, without hesitation, the whole extent and operation of the instrument. The dispatch and certainty which are obtained by this adherence to form, are too valuable to be sacrificed; and it is this consideration which prevents a counsel from feeling himself justified in omitting or improving some parts of deeds which are acknowledged to be useless or obsolete: he is aware that the difficulties which would arise from the want of uniformity, the doubts which the unusual appearance of his deeds would create, and the confusion which would be occasioned if every one were to prepare deeds in a different manner, are of much more importance than the trouble and expense which are caused by a few unnecessary expressions."*

* First Rep. of Real Prop. Com. App. 506. Mr. Tyrrell suggests that if forms of the usual deeds were prepared by the commissioners, and sanctioned by Government, they would be followed by the whole profession, and might correct many redundancies and defects.

And as a further argument in favour of an adherence to established forms, it may be added, that they have been prepared with a degree of care which does not at first sight appear; but which, however, should be borne in mind as a check to the introduction of any alterations which have not been well considered in all their bearings: the most eminent men and of the widest experience having, from time to time, incorporated into these forms such expressions and clauses, as were fitted to obviate those difficulties which have been brought to light in practice, or been suggested by various dicta and decisions.*

(18.) It is an obvious, but necessary cau-

* There were some mathematicians, said Selden, that could with one fetch of their pen make an exact circle, and with the next touch point out the centre: is it therefore reasonable to banish all use of the compasses? Set forms are a pair of compasses. And Lord Coke has remarked that "it is requisite for every student to get precedents and approved forms, not only of deeds, according to the example of Littleton, but of fines and other conveyances and assurances, which will stand him in great stead; both while he studies, and after when he shall give counsel. It is a safe thing to follow approved precedents; *nam nihil simul inventum est et perfectum.*"

tion, that a draftsman should uniformly employ all his technical terms in the sense which usage has affixed to them. Thus the words “convey” and “seised” are applied to freeholds; “possessed” and “assign” to leaseholds; “entitled” and “transfer” to funded property. It is sometimes objected that the terms of law are *too* technical: whereas the truth is, that the more technical the nomenclature of any science is, (assuming that each term is really technical, *i. e.* has a definite, scientific meaning), the more exact and perfect is the science. Such is the fluctuation of meaning to which words in common circulation are subject, (sometimes from pedantry, but more commonly from ignorance and confusion of thought,) that if technical terms were laid aside, nothing but obscurity and uncertainty would ensue. We should be in a situation analogous to that of the surgeon, who, rejecting his own delicately finished instruments, should employ only common tools.

It need hardly be added that all elliptical expressions, and any thing like a suggestive style of writing must be scrupulously avoided. Every thing should yield to perspicuity. The charge

of prolixity had far better be incurred, than that of brevity with obscurity. "Legal instruments," observes the acute author of the "Diversions of Purley,"* "have always been, and always must be, remarkably more tedious and prolix than any other writings, in which the same clearness and precision are not equally important. For abbreviations open a door for doubt; and, by the use of them, what we gain in time, we lose in precision and certainty. In common discourse, we save time by using the short substitutes, **HE** and **SHE**, and **THEY** and **IT**; and, (with a little care on one side, and attention on the other,) they answer our purpose very well; or, if a mistake happens, it is easily set right. But ~~his~~ this substitution will not be risked in a legal instrument; and the drawer thinks himself compelled, for the sake of certainty, to say **HE**, (the said John A.,) to **HIM**, (the said Thomas B.,) for **THEM**, (the said William C. and Anne D.,) as often as those persons are mentioned.†

* Vol. 1, p. 220.—Mr. Taylor's edition.

† "Abbreviations and substitutes undoubtedly," continues the learned philologist, "cannot safely be trusted in

It is also to be observed that punctuation is hardly ever attended to in framing legal instruments, and in construing them, not regarded ; * so that the diction of a conveyancer must answer Dr. Paley's definition of a good style,—it should be intelligible without punctuation—the sense should be clear without the aid of stops.

And on this head, it may be worth while to caution the draftsman against conceiving, that because he himself is acquainted with his own meaning, that therefore his expressions are intelligible to others. Distinctness of conception does not necessarily produce distinctness of expression.†

legal instruments. But it is an unnecessary prolixity, and great absurdity, which at present prevails, to retain the substitute in these writings, at the same time with the principal, for which alone, the substitute is ever inserted, and for which it is merely a proxy. **HE, SHE, THEY, IT, WHO, WHICH, &c.**, should have no place in these instruments, but be altogether banished from them."—Vol. 1, p. 22.

* 1 Meriv. 651.

† "Universally, indeed," says Dr. Whately, "an unpractised writer is liable to be misled by his own knowledge of his own meaning, into supposing those expressions clearly intelligible, which are so to himself; but which may not be so to the reader, whose thoughts are not in the same train. And hence it is that some do not write or speak

(19.) As already intimated, one very important office of Recitals is to show what are the existing *interests* of the active parties to the deed. This may be done in two ways: either by formally reciting the instrument or several instruments, and other acts, conferring or modifying the present ownership,—the causative process as it has been called,—or by stating the result only of this process. On this head it has been well observed, * that, “Where the last conveyance was, we will say, to uses to prevent dower, and we are going to convey under those uses, it would not do to state merely the result,

with so much perspicuity on a subject which has long been very familiar to them, as on one which they understand indeed, but with which they are less intimately acquainted, and in which their knowledge has been more recently acquired. In the former case, it is a matter of some difficulty to keep in the mind the necessity of carefully and copiously explaining principles which, by long habit, have come to assume in our minds the appearance of self-evident truths.” Rhetoric 183. In illustration I may add, that the will of the late Mr. Bradley, who was a distinguished conveyancer in his day, and had been used to settle and arrange the most complicated concerns, was set aside by Lord Thurlow, for *uncertainty*.

* See Appendix, Note (A.)

and say, that 'the lands stand limited to the usual uses to prevent dower,' because there are many minute variations in the forms of uses to prevent dower, as used by different practitioners, particularly as to the mode of executing the power, and no one would know what the exact uses were. But where the direct result of a former deed or instrument is one or more very simple fact or facts, which contain within themselves *all* their own consequences, without looking further into the language or frame of that instrument, we commonly state the result without reciting the instrument. Thus we recite or state that the vendor is seised to him and his heirs in fee-simple, or (if the case be so) to him and his heirs in fee-simple, subject to the dower of the said A., his wife, and so forth. Nothing would be gained by reciting the instrument; because, if the man is seised in fee, we do not want to know the mode of assurance, or the mode of limitation, under which he became so seised. It is perfectly immaterial whether the conveyance was to him, or to another person to his use, &c., or whether the limitation was to him and his heirs, or to him, his heirs, and assigns. Wherever therefore the

simple result of the last conveyance or will is to make the vendor seised in fee, it is unnecessary to recite that conveyance or will itself: the result only need be stated. There are very few other results of instruments besides that of a seisin in fee that can be properly stated merely by naked averment. This is, however, sometimes done, when brevity is required, with regard to estates for life, estates tail, &c.; but in such cases, as a particular estate must have been created by some instrument, it is the almost invariable practice to refer to the instrument, even though it is not recited. Thus we recite, that under and by virtue of the last will and testament of A. B., bearing date, &c., the said C. D. is tenant for his own life of, &c., or tenant in tail male, &c. Where, however, we are going to act *materially* upon the particular estate thus created, it is in general the more satisfactory plan to recite the instrument creating it, substantively: setting out so much of the language as is necessary to enable a lawyer to form his own opinion upon the effect of the limitation, instead of calling upon him to take another man's conclusion upon trust. I said where we are going to act materially upon the

particular estate, and this brings us to another distinction, namely, whether the result of the instrument in question is the very matter upon which we are going to act, and which is, therefore, of the essence of the present transaction ; or whether it is something merely collateral, or mentioned with a view to complete a train of facts, in which latter case we may generally recite it as concisely as possible."

(20.) It is also to be remarked, that another purpose for which Recitals are employed, is to show forth the *characters* of the parties. In doing this the draftsman should not, generally speaking, content himself with stating, as a fact, that such a person is, *e.g.* an executor, or administrator, or a trustee ; but the means by which he acquired that character ought to be shown. In other words, the causative process, not the result merely, should be given.

Thus, if any of the parties act as executors, it is proper to recite so much of the will as relates to their appointment, and then to state the death of the testator, and the probation of his will in the proper Ecclesiastical Court. And in the case of an administrator, the death of the intestate, and the grant of letters of ad-

ministration should be recited. Again: If any of the parties act as trustees, the instrument creating the trust should be recited; and if they do not claim immediately under the instrument of trust, but by virtue of an appointment, this deed ought also to be set forth.

In some cases it is not desirable to disclose the characters of the parties: where, for instance, trustees are lending money, and the mortgagee, if affected with notice of the trusts, would, under the circumstances, be obliged, on repaying the loan, to see to its application. Cases of this complexion, however, can be considered only as exceptions to the general rule.

(21.) It is obviously expedient that every instrument should (if possible) contain within itself all the evidences of its own validity. If, therefore, a deed depend for its operation on some prior instrument, or on the existence of a particular estate, the instrument should be recited, or the creation and subsistence of the particular estate shown.

Ex. gr. In an appointment, the power which gives it efficacy, and the circumstances necessary to be observed on execution, should be distinctly

stated. So in a release operating by way of enlargement, the bargain and sale or lease should be recited. If the particular estate was created by a lease not operating under the statute of uses, but at common law, then, in addition to the Recital of the demise, it is proper to state the fact of entry; because, until entry, the lessee has a mere *interesse terminis*, and such interest is incapable of being enlarged by a release.* But in the case of a bargain and sale, the legal estate which is transferred by the statute of uses, is equivalent to an actual entry, at least so far as to enable the bargainer to accept a release of the reversion.† There is a slight inaccuracy in the usual mode of reciting a bargain and sale, which, as it is calculated to mislead the student, it may be proper to notice. The language of the Recital is "in his *actual possession* now being by virtue of a bargain and sale, &c." Now it will be observed that, according to the Recital, the bargainer is in actual possession; whereas

* Litt. s. 459.

† *Lutwich v. Mitton*, Cro. Jac. 604; 2 Prest. Conv. 390.

the statute gives only a vested or executed estate, not an actual possession.* Hence an action of trespass cannot be maintained by the bargainee until he has obtained possession.† The Recital should be “ in him now *actually vested* by virtue, &c.”

In conveyances of trust property, the creation of the trust, and the power to give receipts and discharges should be shown; but it is not necessary to detail the trusts of the purchase-money. If, however, the trustees are not invested with such a power, and the circumstances of the case make it incumbent on the purchaser to see to the application of the

* *Lutwich v. Mitton*, ut sup.; 2 Prest. Conv. 390, 391, 442.

† *Lutwich v. Mitton*, ut sup.; *Barker v. Keate*, 2 Mod. 249; Co. Litt. 46, b; 270, a; Sugd. Gilb. on Uses, 431; 2 Prest. Conv. 391. I have found, however, a note (for it can hardly be called a report) of an anonymous case in Cro. Eliz. 46, where it is said that *cestui que use* is immediately and *actually seised and in possession of the land*, so as he may have an assise or trespass before entry against any stranger who enters without title; and this by the words of 27 Hen. VIII. c. 10, *viz.* “ that *cestui que use* shall stand and be seised,” &c. And this, adds the reporter, was the opinion of divers justices. See also Cro. Car 110.

proceeds of the sale, then it will be proper to disclose the trusts, and the persons beneficially interested in the purchase-money ought to be made parties to the deed, for the purpose of releasing the purchaser.

In settlements made in pursuance of articles, it is proper to recite the articles, in order to manifest on the face of the instrument that they are rightly executed. When a second mortgage is effected of the same lands, or of any part of them, it is proper to recite the first security in the second mortgage, in order to fix the mortgagee with notice of the incumbrance. If, indeed, the subsisting mortgage is not recited, then it will be necessary to give notice in writing of such prior incumbrance to the mortgagee, otherwise the mortgagor will forfeit his equity of redemption as against the second mortgagee.* In the bill of sale of a ship, or other vessel, the certificate of registry ought to be recited, else the assignment will be void.†

* 4 Wm. & M. c. 16. See 2 Crui. 112, 113, 3rd edit.

† 3 & 4 W. 4, c. 55, s. 31.

(22.) It has already been observed, that in framing a draft the Conveyancer ought to bear in mind, that the instrument should be fitted, not only to effect the present purpose of the parties, but to form, hereafter, a constituent part of the evidences of ownership. The continuity of the evidence should be so maintained, that, in reading the abstract, we may proceed throughout without meeting with any break in the chain of evidence. It is therefore proper, generally speaking, to put upon the deed all such facts and circumstances affecting the title, as have happened since the execution of the last instrument.

Ex. gr. If there be a power of appointment given to A. and B. jointly, and in default of such appointment, a similar power to the survivor of them, and the survivor desires to exercise the power, then it should be recited, that no joint appointment was ever made, and that A. or B. (as the case may be,) departed this life, (mentioning the time,) leaving the said A. or B., him surviving.

Again: if an estate were limited to A. for life, with remainder to B. in fee; and B. is about to convey the fee, A. being dead, then,

in order to keep up the continuity of the evidence of title, the instrument creating the limitations, and the death of A., should be recited in the conveyance.

Again: if a freehold estate were devised to two and their heirs, and one of the devisees proves to be an attesting witness to the will, in consequence of which the devise to him is void,* and the whole vests in the other devisee, then it will be proper, in the conveyance to a purchaser or mortgagee, to recite these circumstances.

Again: if an estate were devised to one upon a certain contingency, and that contingency happened, then upon a conveyance of the estate, this fact, as well as the will, should be stated, in order that the future abstract may show how the contingent estate became vested. So, if a devise has lapsed

* 25 Geo. 2, c. 6. This statute applies only to a devise of *freeholds*, giving a *beneficial* interest to the devisee. See *Lees v. Summersgill*, 17 Ves. 508, which was overruled by *Brett v. Brett*, 3 Add. 210; 1 Hagg. Eccl. Rep. 58, n., (a.); 3 Russ. 437, n.; *Emanuel v. Constable*, 3 Russ. 436; and *Foster v. Banbury*, 3 Sim. 40; and see *Phipps v. Pitcher*, 6 Tau. 220; 2 Marsh. 20; 1 Madd. 144.

by the death of the devisee, in the lifetime of the testator, and the estate descended upon the heir at law, then, upon a conveyance of the property, these facts should be recited.

And here it may be worth while to remark, (what, indeed, will readily occur to any one who thinks upon the subject,) that, when the consequences of any act of the parties or the law are not self-evident, or from the complicated nature of the transactions, require an effort of attention to recollect, it will be highly conducive to the clearness of the Recitals and the future abstract, if, in the instrument, some Recitals be introduced expressive of such consequences. Misunderstanding the real object of such Recitals, an unskilful draftsman will sometimes state what is too obvious to require explanation; as, *e. g.*, that A. B. departed this life, whereupon his estate for life determined, or that a particular person entered into a bond for securing a certain sum, whereby he became liable to pay it.

(23.) To indicate the object to be effected is another office of Recitals. In framing Recitals of this kind very great caution is necessary, as,

under certain circumstances, they may control the operation of the instrument. Thus it is held, that if there be a particular Recital, and general words of release are afterwards inserted, the generality of the latter will be qualified by the Recital.* In submissions to arbitration, and especially in deeds of compromise and confirmation, the intentional Recitals should be expressed with the utmost clearness. In a late case,† Sir John Leach observed, that "in equity, it is considered, (as good sense requires it should be,) that no man can be held by any act of his to confirm a title, unless he was fully aware at the time, not only of the fact upon which the defect of title depends, but of the consequences in point of law."‡ In all cases of

* *Simons v. Johnson*, 3 B. & Ad. 175; *Payler v. Homer-sham*, 4 M. & S. 423; *Solly v. Forbes*, 2 Brod. & Bing. 38; and the cases cited in arg.

† *Cockerell v. Cholmeley*, 1 Russ. & M. 425.

‡ "A person called upon to join in a conveyance, for the purpose of obviating a specified objection to a title, would not be bound as to any other interest of which he was not apprised; though if he is told generally that there are objections to the title, and consents to join in the conveyance, it must be taken that he has inquired into the na-

this kind, therefore, the draftsman should *explicitly* state such matters as will clearly show that the parties are in full possession of all the circumstances, and know the consequences involved in the action about to be performed. Indeed, as already intimated, it is a rule in reciting, that nothing should be left to an *implicit* statement, unless it be the necessary and obvious result of what has gone before; for although the transaction may be sufficiently plain to the framer of the draft and the parties to it, yet to a stranger it may be obscure; and this caution is the more necessary, because, as before remarked,* the very circumstance of a person having a full knowledge of his own meaning, is apt to make him believe that expressions clear to himself, are equally intelligible to others.

(24.) With regard to the mode of reciting instruments or facts, some suggestions have been already offered; and there is little to be added

ture of the objection, and shall not afterwards raise a question as to the extent of his information."—*Per Sir William Grant, M. R. Cholmondeley v. Clinton*, 2 Meriv. 355; and see *Lord Braybroke v. Inskip*, 3 Ves. 417, 431.

* *Ante*, p. 34, (n.)

which the student will not himself acquire when he has become familiar with the usual language and forms of Recitals.

It is the practice of many conveyancers, whenever the date of an instrument or of a fact is stated, to introduce it with the words “on or about:” in order to guard against any error as to the particular day. And in reciting an indenture *inter partes*, some use the words “made, or *expressed to be made*, between,” &c.: because the deed may not have been executed by *all* the parties. Perhaps, however, these cautionary expressions are of little use, except only where the operation of the deed may be said to depend upon the Recital.*

* Mr. Coventry treats these words “made or expressed to be made” as absurd, conceiving that they imply that a deed can be made by other persons than those named in it. With reference to this observation, Mr. Jarman has justly remarked, that the words “expressed to be made” are obviously designed to provide against the possible event of the recited deed not being executed by all the persons who are professed to be parties to it; and in such case, their insertion seems to be necessary to complete accuracy, since a deed cannot correctly be described to be made by a person who does not execute it. They would, of course, be parti-

On this head, it may be worth while to remark, that when reciting an instrument, or any clause in an instrument, the meaning of which is ambiguous, it is proper to quote the identical expressions. If a will, or a devise or bequest in a will, we may introduce it thus: "Whereas the said A. B. duly made, signed, and published his last will and testament in writing, bearing date, &c. in the words or to the effect following, that is to say, &c. &c." or, "in which is contained a devise or bequest in the words, or to the effect following, that is to say, &c. &c." as the case may be.

It frequently happens that the Recitals contained in instruments, as well as the instruments themselves, are to be recited; and when this is the case, they ought, generally speaking, to be given as distinct links,—as substantive Recitals. If, however, under the circumstances

cularly appropriate, when any of the professed parties to the deed refuse to execute it; as, where a trustee disclaims the trust estate intended to be vested in him. The deed of disclaimer reciting the trust deed should state it as a deed expressed to be made between the intended grantors and the trustee, who refuses the acceptance of the estate intended to be vested in him." 8 *Jam. Prec.* 263.

of the case, this cannot be conveniently done, or the accuracy of the Recitals is questionable, then they may be recited parenthetically.

It is also to be observed, that when there are several instruments constituting, as it were, one conveyance, they should be recited according to their *united* operation.

(25.) In conclusion, it may be remarked, that, generally speaking, the Recitals should be arranged chronologically; if, however, there are distinct interests comprised in separate instruments, then it will conduce more to the clearness of the narration, if each class is separately recited. To determine at what stage of the title we should take up the narration, no comprehensive rule can be laid down, as this must depend on the particular circumstances of each case.

It may, however, be observed, that in a complicated title where several instruments are so chained together, that they baffle all attempts to unlink them, and it is not desirable to recite the whole, the object of the draftsman may frequently be best attained by stating only the ultimate result. And if we bear in mind the

several purposes for which Recitals are employed, and especially that all existing interests ought to be made manifest, a little practice will easily overcome any difficulty that may arise.



RECITAL-BOOK.

ABATEMENT. *See Suit.*

ABDUCTION.

(1.) Whereas E. T., the only child of ^{Abduction, and marriage at Gretna Green.} W. T. Esq., an infant, under the age of sixteen years, was lately by fraud, contrivance, and forgery, illegally taken and carried away by one E. G. W., a stranger, wholly unknown to the said E. T.; and being under the control of the said E. G. W., was afterwards, to wit, on the 8th day of March, 1826, (a) by fraud, imposition, fear,

(a) This date has been retained, as the particular case of abduction recited in the text, gave occasion to the 9 Geo. 4, c. 31, which enacts, that where any woman shall have any interest whether legal or equitable, present or future, absolute, conditional, or contingent, in any real or personal estate, or shall be an heiress presumptive, or next of kin to any one having such interest, if any person shall, from motives of lucre, take away or detain such woman against her will, with intent to marry or defile her, or to cause her to be mar-

and intimidation, made and induced at **Gret-na Green**, in that part of the United Kingdom of Great Britain and Ireland called Scotland, to marry the said E. G. W., according to certain forms and ceremonies which are alleged to constitute a marriage according to the laws and customs of that part of the United Kingdom called Scotland.

Conviction
of abductor,
and expedi-
ency of de-
claring al-
leged mar-
riage void.

(2.) And whereas the said E. G. W. was afterwards convicted, in due course of law, of conspiring, with certain other persons, to take and convey the said E. T. out of the

ried or defiled by any other person; every such offender, and every person counselling, aiding, or abetting such offender, shall be guilty of felony, and being convicted thereof, shall be liable to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned, with or without hard labour, in the common gaol or house of correction, for any term not exceeding four years. *Sect. 19.*—And that if any person shall unlawfully take, or cause to be taken, any unmarried girl, being under the age of sixteen years, out of the possession and against the will of her father or mother, or any other person having the lawful care or charge of her, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable to suffer such punishment, by fine or imprisonment, or by both, as the court shall award. *Sect. 20.*

of certain persons, then having the
order, keeping, education, and go-
rnance of the said E. T., and to cause and
procure her to marry the said E. G. W.,
without the knowledge or consent of the
said W. T., her father; and of having un-
lawfully taken and conveyed the said E. T.,
then being a maid, unmarried, under the age
of sixteen years, out of and from the posses-
sion of certain persons having, by the con-
sent and appointment of the said E. T., the
order, keeping, education, and governance of
the said E. T.; and the said E. G. W. is now
suffering the sentence of the law upon the
first of the said convictions. And whereas
it is expedient that the said alleged mar-
riage should be declared null and void.

ACCEPTANCE. *See Bill of Exchange.*

(3.) And whereas the said A. B. and C.
his wife have accepted the provision made
for the said C., by the will of the said B. B.,
in satisfaction and full discharge of the said
annuity of £—, to which the said C. B. be-

Acceptance
of testamen-
tary provi-
sion in lieu
of annuity,
agreed to be
extinguished.

came entitled for her life under the said will; and have consented and agreed to join in the conveyance of the said messuages, lands, and other hereditaments hereinafter granted and released, or expressed and intended so to be, for the purpose of extinguishing the same annuity of £—.

Agreement
to accept an
annuity
from heir at
law, in lieu
of dower.

(4.) And whereas the said A. B. hath agreed to accept a clear annuity or yearly sum of £— for her life, in lieu of her dower, and in full satisfaction and discharge of all right and title to the same, and of all damages on account thereof.

ACCOUNT. *See Bankers.*

Adjustment
and settle-
ment of ac-
counts.

(5.) Whereas there have been several accounts and pecuniary transactions between the said A. B. and C. D.; all of which are now adjusted and settled.

Adjustment
of accounts,
and agree-
ment to exe-
cute mutual
releases.

(6.) Whereas sundry accounts, current and otherwise, and divers dealings in trade have been subsisting and depending for some time past between the said A. B. and C. D. And whereas the said accounts have

been duly balanced and adjusted; and in order to prevent any future disputes concerning the same, the said A. B. and C. D. have agreed to execute and give the mutual releases hereinafter contained.

(7.) And whereas the clear balance or share due to the said A. B., in respect of the said copartnership, on the last day of settlement of the accounts thereof next preceding the decease of the said A. B., *viz.* on the — day of —, amounted to the sum of £—, which, with the said allowance of £— per cent. thereon as aforesaid, make together the aggregate sum of £—.

(8.) And whereas an account hath this day been made up between the said A. B. and C. D., and there appears to be due to the said A. B., in respect of the said mortgage, the sum of £— for principal and interest up to the day of the date of these presents. (b)

(9.) And whereas upon an account this

Accounts made up between co-partners before death of one of them.

Account made up between mortgagor and mortgagee.

Account stated between mort-

(b) This form is sometime used; but it is more concise, instead of referring to any account, to state only what money is due on the mortgage. For a form of this kind, see tit. "Mortgage."

gagor and ex- day stated, adjusted, and settled by and
ecutor of mortgages. between the said A. B. of the one part, and
the said C. D. of the other part, it appears,
that the said principal sum of £—, together
with the sum of £—, for an arrear of interest
thereon, is now due and owing to the said
A. B. upon the said security, as surviving
executor of the said D. F.

Account
stated with
mortgagee
in posses-
sion, on re-
lease of
equity of re-
demption.

(10.) And whereas upon an account made
up and stated between the said A. B. and
the said C. D., as such surviving assignee
as aforesaid, of and concerning the said
principal money and interest secured upon
the said several recited mortgages, and of the
rents and profits received by the said A. B.
out of the said mortgaged premises, after
making to the said A. B. all just allowances
for repairs, taxes, and other expenses in
and about the management of the said
estates, and collecting and getting in the
rents and profits thereof, there appears to
be due and owing to the said A. B., on the
balance of such accounts, the sum of £—,
which is much more than the value of the
said mortgaged premises, or the same would
fetch either by public auction or private con-

ct; and the said A. B. hath therefore opposed to the said C. D. to accept a release of the equity of redemption of the said mortgaged premises, in full satisfaction for his demands, and of any deficiency that the said estates might fall short of paying and satisfying; and to relinquish and give up any claim he may have to come in under the estate of the said C. D. in respect of any such deficiency; and which proposal the said C. D. hath agreed to accept, and to release his equity of redemption in and to the said mortgaged premises unto the said A. B. in manner hereinafter mentioned.

(11.) And whereas the several sums owing to the said creditors respectively for principal monies and interest have been stated to the said A. B. and C. D., parties hereto, and to the several creditors, parties to these presents, before the same were inserted in the said schedule, and it was allowed and agreed upon by all the said parties to these presents, and they do hereby admit and allow, that the several sums for principal and interest which in the said last mentioned schedule are stated to be owing to the said

Allowance
by creditors
of stated ac-
count.

creditors respectively, are really and truly owing to the said creditors respectively, and are the sums to be paid to them respectively, in manner and in the order hereinafter mentioned, under the trusts herein-after contained.

Administrator's ac-
counts ren-
dered and
examined.

(12.) And whereas the said A. B., as such administrator as aforesaid, hath rendered a full and true account of the personal estate and effects of the said C. B., come to her hands or to her knowledge, and of all the outstanding claims and effects of or belonging to the said C. B., and of the manner in which the same personal estate and effects have been applied; and the same account hath been examined by the aforesaid assignees.

Administrator's ac-
counts set
forth in sche-
dule.

(13.) And whereas the said accounts relating to the personal estate and effects of the said C. B. are set forth in the schedule hereunder written, or hereunto annexed.

That trus-
tees have
made out
account of
their receipts
and pay-
ments.

(14.) And whereas the said A. B. and C. D. have made, or caused to be made, out a full, true, and particular account of all and singular their receipts, payments, dealings, and transactions in, about, or concerning the

execution of the trusts of the said will up to the &c., now last past.

(15.) And whereas such accounts, together with such vouchers and documents as they the said D. D. and E. F. respectively have thought proper to require, in order to verify and substantiate the same, have been presented to them the said D. D. and E. F., or to their respective agents, by or on the behalf of the said A. B. and C. D.

(16.) And whereas such accounts, vouchers, and documents have been duly inspected, examined, and approved of by them the said D. D. and E. F., as they do hereby respectively admit and acknowledge.

ACT OF PARLIAMENT.

(17.) Whereas by an Act of Parliament made and passed in the first year of the reign of his present Majesty King William the Fourth, intituled "An Act," &c. it was enacted, that, &c.

(18.) And whereas by indentures of lease and release, bearing date respectively, the

Act of Par-
liament.

Conveyance
in pursuance
of act.

&c., the release being made, or expressed to be made, between A. B. of the one part, and C. D. of the other part, in pursuance of the provisions of an Act of Parliament made and passed in the &c., intituled "An Act," &c.; and in consideration of the sum of £— to the said A. B., paid by the said C. D., the said manor, messuages, lands, and other hereditaments were conveyed, limited, and assured unto and to the use of the said C. D., his heirs, and assigns, for ever.

Fulfilment
of requisi-
tions of act.

(19.) And whereas all the requisitions and directions enjoined by the said Act of Parliament, have been duly performed and fulfilled by the said A. B.

Expediency
of applying
for act to
exonerate
certain es-
tates of an
accountant,
from all
claims of the
Crown.

(20.) And whereas on account of the office of the said A. B., as one of the Receivers-general of the land-tax, and other taxes and duties for the county of N., the title of the said A. B. to the said messuages and other hereditaments, and also the title of all persons purchasing under him will continue liable to the claims of the Crown (b)

(b) See 7 Jarman's Conv. 388; Coventry's Conv. Evidence, 234.

in respect of any debts due, or to become due, from the said A. B., as one of the Receivers-general of the land-tax and other Taxes and duties as aforesaid; and it is therefore deemed expedient that an application should be made to Parliament for an Act to exonerate and discharge the said messuages, and other hereditaments from the claims of the Crown, in respect of any debts due, or to become due, from the said A. B. as aforesaid.

(21.) And whereas it is expedient that the powers and provisions of the said recited act, so far as they relate to the said annuity or yearly sum of £—, should be repealed; and that other and more effectual powers and provisions should be granted and made in the lieu and stead thereof: but the same cannot be effected without the aid and authority of Parliament.

(22.) And whereas by reason of the limitations contained in the said will of the said A. B., the several purposes hereinbefore mentioned cannot be effected without the aid and authority of Parliament.

ACTION.

Action on
bills of ex-
change.

(23.) And whereas an action was commenced in His Majesty's Court of King's Bench at Westminster in — term, in the year of our Lord, &c. by the said A. B. and C. D., as plaintiffs, against the said E, F., as defendant, on two certain bills of exchange.

Action of
ejectment.

(24.) Whereas a certain action of ejectment was lately commenced in His Majesty's Court of Common Pleas at Westminster, wherein John Doe (on the several demises of A. B. and C. D.) was plaintiff, and Richard Roe was defendant, for the recovery of certain [or, the said] premises with the appurtenances in the parish of D., in the county of L.

That action
was com-
menced
against the
tenant in
possession,
to recover
premises.

(25.) And whereas the said action of ejectment was commenced by the said A. B. against T. D., as the tenant in possession of a certain [or, the said] messuage, tenement, or farmhouse, with the barns, stables, out-buildings, yards, gardens, and appurtenances thereto belonging, situate in the parish of D. aforesaid; and also of a [or, the said] close of ground thereto adjoining and belonging, containing by estimation &c., all now in the

occupation of the said T. D., for the recovery of the possession thereof, respectively.

(26.) And whereas the said T. D. hath entered into the common consent rule, and been admitted defendant in the said action, and pleaded thereto.

(27.) And whereas the said A. B. afterwards commenced an action of ejectment wherein John Doe (on the demise of the said A. B. or, on the several demises of the said A. B. and C. D.) was plaintiff, and Richard Roe [or, if the tenant in possession appeared and was made a defendant, T. D.] was defendant, in His Majesty's Court of King's Bench, at Westminster, for the recovery of the possession of the said messuages, lands, and hereditaments; and, in — term in the — year of the reign of his present Majesty, judgment was obtained therein in favour of the plaintiff, and execution of the same judgment was afterwards had, by virtue of a writ of possession, returnable in — term then next following.

(28.) Whereas an action was brought in the Court of King's Bench, at Westminster, wherein A. B. and C. D., as surviving executors of B. B., deceased, were plaintiffs,

That tenant entered into consent rule, and pleaded,

Action in ejectment, judgment, and execu-
tion.

Action and pleadings.

and E. F. was defendant; in which action the plaintiffs declared upon a promissory note stated to have been made by the defendant, upon and dated the &c., for £— with interest, at £— per cent. per annum payable to the said B. B.; and the said plaintiffs in such action also declared for various sums of money stated to be due to the said B. B., deceased, from the said E. F. for goods sold and delivered, work done and materials for the same provided, money lent and advanced to, and paid for the use of the said E. F., and for money had and received by the said E. F. for the use of the said B. B., and also for money stated to be due to the said plaintiffs, as such executors, upon an account stated between them and the said E. F.; and the said E. F., the defendant, pleaded to such action the general issue *non assumpsit*, the statute of limitations, and a set-off, or demand upon the plaintiffs as such executors as aforesaid.

Action be-
fore Court of
Session in
Scotland.

(29.) And whereas in the year &c. an action was raised and pursued before the Court of Session in Scotland, at the instance of W. F., Esq., as assignee of Messieurs F. B. and Company, merchants

in London; and on the death of the said W. F. was insisted in by his son J. F., Esq., also merchant in London, to whom the said A. B. was thereby alleged to be indebted in the sum of £— with interest thereon, from the said — day of —, concluding, *inter alia*, that it ought and should be found and declared, that the said C. B. had no feudal right to the aforesaid lands of D., and pertinents, when he executed the aforesaid disposition and deed of entail, and that as the aforesaid disposition and deed of entail, made and granted by the said G. F., Lord H., and which conveyed the forty shilling lands of D., and pertinents to the said A. B., had not been recorded as required by the act sixteen hundred and eighty-five, chapter twenty-two, the same was ineffectual against the pursuer, a just and onerous creditor of the said A. B., so as to prevent him from attaching the said lands by diligence for payment; and further, that as the said A. B., possessed the said lands as heir apparent of line of the said C. B., from the year &c. in fee simple, without completing any title under the entail, the said lands are thereby liable for his

debts and deeds; in which action the said court, after sundry proceedings, did upon the &c., pronounce a decree in terms of the above conclusions.

Agreement
by obligees
to enforce
securities
against ob-
ligor, as the
means of re-
lieving sure-
ties from
their liabi-
lities.

(30.) And whereas the said A. B. and C. D. have applied to the said parties hereto of the second part, and requested them to take measures for enforcing the benefit of the said several securities against the said G., Duke of M., as the means of relieving the said A. B. and C. D. from their respective liabilities as the sureties of the said Duke; and the said parties hereto of the second part, have consented and agreed to comply with that request, so far as to them shall seem expedient, upon the terms that the said A. B. and C. D. shall indemnify the said parties hereto of the second part, from and against all losses and expenses to be incurred by them, by reason of any measures to be adopted for enforcing the benefit of the said securities as aforesaid.

ADMINISTRATION.

Intestacy
and letters
of adminis-
tration.

(31.) And whereas the said A. B. departed this life on or about the &c. intest-

tate, leaving the said C. B. his only child and personal representative; and letters of administration of the goods and chattels, rights and credits of the said A. B. were, on or about the &c., duly granted to the said C. B., by or out of the — Court of — [or, by or out of the proper Ecclesiastical Court.]

(32.) And whereas letters of administration <sup>Limited ad-
ministration.</sup> of all and singular the goods and chattels, rights and credits of the said A. B., so far as relates to or concerns the said term of — years, were on about the &c., duly granted to the said C. D., by or out of the — Court of — [or, by or out of the proper Ecclesiastical Court]. (c)

(33.) And whereas letters of administration <sup>Administra-
tion de bonis
non.</sup> *de bonis non*, with the will annexed of the said A. B., were on or about the &c. duly granted to the said C. D., by or out of the Prerogative Court of the Archbishop of York, [or, by or out of the proper Ecclesiastical Court.]

(c) As to taking out administrations in cases of terms for years, see Appendix, Note (B.)

ADMITTANCE.

Admittance to copyholds as tenant in fee.

(34.) And whereas at a Court holden for the manor of W., in the county of B., on the &c., the said C. D. was admitted tenant of the copyhold hereditaments hereinafter described, to hold to him and his heirs, at the will of the lord, according to the custom of the said manor.

Admittance to copyholds as tenant in tail under will.

(35.) And whereas at a Court holden in and for the said manor of B., on the, &c. the said A. B. was admitted tenant, under and by virtue of the said hereinbefore in part recited will of the said L. M., to the messuages, lands, and other hereditaments hereinafter described, and covenanted to be surrendered with the appurtenances, to hold to him the said A. B., and the heirs of his body, according to the form and effect of the said recited will, by copy of court-roll, at the will of the lord, according to the custom of the said manor.

Admittance of trustee to copyholds.

(36.) And whereas the said A. B. was, on or about the, &c., at a Court holden for the manor of D., in the county of M., admitted tenant, according to the custom of the said manor, of the messuage, lands, tenements,

and other hereditaments hereinafter particularly mentioned, and hereby covenanted to be surrendered, in trust for the said C. D., his heirs, and assigns. (d)

(37.) And whereas the said A. B. and C. his wife, did on the &c. prefer their bill of complaint in the High Court of Chancery, (e)

(d) If a tenant surrenders the land into the hands of the lord to the intent that a new tenant may be substituted in his place, subject to trusts which are either expressed, or referred to as contained in a certain instrument, and the lord admits the new tenant upon such surrender, he is to be considered as thereby assenting to the qualified nature of his tenure, and cannot afterwards claim against those tenants to which he has consented. *Weaver v. Maule*, 2 Russ. & M. 97.

(e) "The ground of the jurisdiction to compel an admittance is quite clear. When a party entitled to a copyhold, surrenders it, and the lord will not admit the surrenderee, he is then neglecting to perform a duty which is now become merely formal; for the admittance is merely a form of conveyance, as the tenant is in by the surrender. If we go back to very remote periods, it was otherwise; but now it is settled that the lord is a mere instrument to admit the person nominated by the surrenderer, provided he is a fit person. If he does not, he has received the surrender without doing that which he is bound to do, and the remedy to compel him was formerly by *subpæna*, when there was no doubt of the party to be admitted. But it has been found, that being only a legal title, which, if the parties come into equity, must ultimately be sent to law, the

Bill to enforce admittance to copyholds.

against the said T. H. and E. T., and S. H. lord of the manor of H., of which the said copyholds and hereditaments are holden, stating the title of the said C. B. and the conveyance and surrender made in trust for the said T. H., and prayed, for the reason and causes therein alleged, that &c.

ADVOWSON.

Title to ad-
vowson of
rectory and
church.

(38.) Whereas the said A. B. is seised of, or well and sufficiently entitled to, the advowson of the rectory and parish church of A., and other hereditaments hereinafter particularly described, and intended to be hereby granted and released with their appurtenances, for an estate of freehold and

most expeditious remedy is by applying to a court of law at once, thus avoiding circuity of action, and increased expense." *Per Master of the Rolls*, in *Widdowson v. Harrington*, 1 Jac. & W. 544. In this case, it was held that a court of equity will not compel the lord to admit a person who does not show a clear ground of title, and that there is a reasonable prospect of succeeding at law. As to enforcing admittance by mandamus, see 1 Scriv. on Copyh. c. xvi.

inheritance in fee simple in possession, free from all incumbrances.

(39.) Whereas by an indenture bearing Grant of Ad-
vowson in
date on or about the &c., and made or ex-
-fee. witness to be made between A. B. of the one part, and the said C. D. of the other part, in consideration of the sum of £— to the said A. B. paid by the said C. D., all that the advowson, donation, free disposition, perpetual patronage, and right of presentation of, in, and to, the rectory and parish church of A., in the county of C., together with the parsonage house and outhouses hereto belonging, with the appurtenances, were granted and conveyed unto and to the use of the said C. D., his heirs and assigns for ever.

(40.) And whereas the said A. B. hath Contract for
sale of ad-
vowson. contracted and agreed with the said C. D. for the absolute sale to him the said C. D. of the said advowson and other hereditaments hereinafter particularly described, and intended to be hereby granted and released with the appurtenances, and the fee simple and inheritance thereof in possession, free from all incumbrances, at or for the price or sum of £—.

AGE.

Attainment of age. (41.) And whereas the said A. B. attained her age of 25 years, on or about the &c. and the said C. D., E. F., and G. H., severally attained their respective ages of 21 years, (f) on or about the &c.

Attainment of age by tenant for life. (42.) And whereas the said A. B. hath attained his age of 25 years, and under and by virtue of the last will and testament of C. D. &c., bearing date &c., is tenant for life of certain messuages, lands, and other hereditaments, situate in the parish of L., in the county of M.

Attainment of age, and that an infant is made party to execute when of age. (43.) And whereas the said A. B. and C. D. have severally attained their respective ages of 21 years; but the said D. D. was of the age of 18 years, on the &c., and is made a party to these presents for the purpose of executing the same, when he shall have attained his age of 21 years.

Attainment of age by surviving children. (44.) And whereas the said several persons parties hereto of the first part, are the — only surviving children of the said A. B., the daughter of the said C. D., and

(f) See Mr. Hargrave's note to Co. Litt. 89, b. n. 6. Touch. 403.

have all attained their respective ages of 21 years.

(45.) And whereas the said E. F. and G. H., the other of the children of the said A. B., mentioned in the will of the said B. B., departed this life some time in the year of — unmarried, having attained their respective ages of 21 years.

(46.) And whereas the said A. B., C. D., and E. F., have attained their respective ages of 21 years, but the said B. B. and E. M. are still infants under the age of 21 years.

(47.) And whereas the said A. B. is under the age of 21 years.

(48.) And whereas the said A. B. was at the time of her marriage, and still is, under the age of 21 years.

AGENT.

(49.) And whereas the said A. B. became the purchaser of the said hereditaments as the agent only, and on behalf of the said C. D., as he the said C. D. doth hereby acknowledge, testified by his executing these presents.

Agreement to employ agent.

(50.) And whereas the said A. B. and C. D. have proposed and agreed to employ the said D. D. as an agent or factor for the sale of — manufactured by the said A. B. and C. D., and such other goods and merchandizes as may from time to time be transmitted by the said A. B. and C. D. to the said D. D.

Agreement to act as agent.

(51.) Whereas the said A. B. hath agreed with the said C. D. and E. F. to act as their agent or factor, for the purposes and during the term hereinafter mentioned.

Desire to employ Insurance broker.

(52.) Whereas the said A. B. is desirous of becoming an underwriter or insurer of ships or vessels, and of merchandize on board ships or vessels, and of employing the said C. D. as his broker or agent, for the purpose of making and effecting such insurances, and for receiving the premiums of insurance, under and subject to the terms and agreement hereinafter contained.

Intention to leave the United Kingdom, and consent of one to act as agent, during the absence of principal.

(53.) Whereas the said A. B., being about to leave the United Kingdom of Great Britain and Ireland, and to reside for a time in foreign parts, hath requested C. D. of, &c. to take upon himself the care of his estate and property, and to act for him in his af-

airs during his absence, which the said C. D. hath consented to do.

(54.) And whereas the said A. B., being desirous of providing for the event of the decease of the said C. D. during the absence of him the said A. B., hath requested E. F. &c. to take upon himself the care of the estate and property of the said A. B., and to act for him in his affairs during his absence in the event of such decease as aforesaid, which he hath consented to do.

Consent to act as agent on the decease of present agent.

AGREEMENT. (g)

(55) Whereas by certain articles of agreement in writing made and entered into by

Articles of agreement not to give credit to any

(g) There are many Recitals dispersed over the following pages, which might, without impropriety, have been classed under this general head. Such a classification, however, it is conceived, would have been less useful in practice than one more specific. On this account, it has been thought better, in several instances, to dispose the Recitals in an order suggested by their *subject-matter*, rather than their *forms*. Thus, for example, instead of referring an agreement for partition, to the present head, it is inserted under that of "Partition."

one who
should take
the benefit
of the Insol-
vent Debtors'
Act, &c.

the several persons whose names and seals are affixed to the above written bond or obligation, and bearing even date with the above written bond or obligation, each of them, the said several persons parties thereto, did for himself, his heirs, executors, and administrators, promise, declare, and agree with and to the other and others of them, his and their executors and administrators, that they the said several persons parties thereto, should not nor would, so long as they should respectively carry on the trade or business of &c., at &c., in the city of &c., or at any other place or places within — miles therefrom, sell or dispose of any, &c. [*here describe the subject-matter of sale*] to or for the use of any person or persons for the purpose of re-sale, who, after the day of the date of the articles now in recital, should have taken the benefit of the Insolvent Debtors' Act, or who should have been declared a bankrupt or bankrupts, or who should have entered into any composition with their or his creditors, and should not have paid twenty shillings in the pound, unless such person or persons should pay ready

money for the same, such ready money to be paid before such &c. [*subject-matter of sale*] should be taken possession of by the purchaser: and further, that if any or either of them, the said several persons parties thereto, should at any time or times thereafter, contrary to the aforesaid agreement, allow or give such trust or credit as therein and hereinbefore mentioned, then that every such person so giving trust as aforesaid, should, on every such occasion, well and truly pay to and amongst the other or others of them, the said several persons parties thereto, his and their executors, administrators, and assigns, (except to such of them as should at any time or times have made default in observing the agreement therein and hereinbefore mentioned,) the full sum of £— of lawful money of Great Britain, as and in the nature of liquidated damages: such sum of £— to be sued for by any or either of the said parties thereto, (except as aforesaid,) and when received, to be divided by the person or persons obtaining payment thereof equally between and amongst the said several persons parties thereto (except as aforesaid).

*Agreement
to discharge
mortgage out
of purchase
money.*

(56.) And upon the treaty for the said purchase it was agreed that the said sum of £—, due and owing to the said A. B. upon or by virtue of the said security, should be paid to him by the said C. D. out of the said sum of £—, the purchase money.

*Agreement
to secure
payment of
part of pur-
chase money
by a mort-
gage of pur-
chased
estate.*

(57.) And upon the treaty for the said purchase, it was agreed that the sum of £—, part of the said purchase money, should be secured to be paid to the said A. B., his executors, administrators, and assigns, with interest for the same, after the rate, at the times, and in the manner herein-after mentioned, by a mortgage of the said purchased premises.

*Agreement
to secure
payment of
part of pur-
chase money
by bond, and
that pre-
mises should
be discharg-
ed from all
lien.—Exe-
cution of
Bond.*

(58.) And whereas on the treaty for the said purchase, it was agreed between the said A. B. and C. D. that the sum of £—, part of the said sum of £—, should be secured to be paid to the said A. B. by the bond or obligation of the said C. D.; and that the said A. B. should accept and take the said bond or obligation of the said C. D. for the said sum of £—, as the full security for the same; and that the said messuages, &c. should be held by the said C. D., his heirs, appointees, and assigns, freed and

discharged from all lien (*h*) and claim of the said A. B. in respect of the same. And whereas in pursuance and performance of the said agreement, in that behalf, the said C. D. hath this day executed and given unto the said A. B. his bond or obligation in writing, bearing even date herewith, in the penal sum of £—, with a condition thereunder written for making void the same, on payment to the said A. B., his executors, administrators, or assigns the said sum of £—, together with interest for the same, after the rate, on or at the days or times, and in manner therein mentioned and appointed for payment thereof.

(59.) And whereas it hath been agreed by and between the said parties to these presents of the 1st, 4th, and 5th parts respectively, that the said freehold and leasehold messuages, and other hereditaments hereinafter particularly mentioned, and intended to be hereby released and assigned respectively, which said last mentioned free-

Agreement
to convey
and assign
freehold and
leasehold.

(*h*) As to the vendor's lien on the estate sold for the purchase money, if not paid, see Sugd. V. & P. ch. 12.

hold and leasehold premises are respectively coloured in the ground plan thereof, in the margin of the said presents, yellow and blue, should be conveyed and assigned, respectively, to the use of or in trust for the said A. B., his heirs, appointees, executors, administrators, and assigns, according to the nature and quality thereof, respectively, and in the manner hereinafter mentioned ; and that the freehold and leasehold messuages and other hereditaments on the said ground-plan, respectively, coloured green and red, should be conveyed and assigned, respectively, to the use of or in trust for the said C. D., his heirs, appointees, executors, administrators, and assigns, according, &c. (*as above.*)

Agreement
to assign
money to
trustees.

(60.) And whereas upon the treaty for the said intended marriage, it was agreed that the said one-sixth part or share of her the said A. B. in the said several sums of £—, and £—; and also the life interest of the said C. D., in the said last mentioned sum, should be respectively transferred and assigned to the said D. E. and G. H., in the manner, upon the trusts, and subject to the powers hereinafter mentioned and contained.

(61.) And whereas it hath been agreed Agreement (by indorsement) to stand possessed of term upon certain trusts. between and by the several parties to these presents, that the said A. B. should stand and be possessed of the within mentioned premises for the residue of the within mentioned term of — years, upon the trusts and in manner hereinafter mentioned.

(62.) And whereas the said A. B. hath Agreement to edit work. agreed with the said C. D., to edit and make ready for publication, as hereinafter is mentioned, a new edition of the said work for the sum of £—.

(63.) And whereas for carrying the said contracts into execution, and for securing the due and regular payment of the said bills of exchange, or the amount or value of the same, it hath been agreed between the said parties hereto, that the said ship or vessel, together with her tackle and apparel, should be bargained, sold, and assigned to the said A. B. and C. D., their executors, administrators, and assigns, upon trust, in the first place, for securing the payment of the said several sums of £—, £—, and £—, when and as the said bills of exchange for the same sums respectively shall become due and payable; and subject thereto, in trust

for the said I. W., his executors, administrators and assigns, as is hereinafter expressed.

Agreement to assign mortgage money to trustees.

(64.) And whereas a marriage is intended to be shortly had and solemnized between the said A. B. and C. D., and on the treaty for the said marriage, it was agreed that the sums of money and shares of and to which the said A. B. is possessed and entitled as hereinbefore is mentioned, and the securities for the same, should be assigned to the said R. B. and H. D., their executors, administrators, and assigns, upon certain trusts to be declared of and concerning the same.

ANNUITY.

Contract for sale of annuity for life; and payment of consideration.

(65.) Whereas the said A. B. hath contracted and agreed with the said C. D. for the sale to the said C. D., his executors, administrators, and assigns, of a clear annuity or yearly sum of £— for the life of the said A. B., and the true and *bona fide* consideration to be advanced and given for the purchase of the said annuity, is the sum of £—, to be paid by the said C. D. to the said A. B.; and the said C. D. in his own proper

erson hath, on the day of the date of these presents, paid to the said A. B., in his own proper person, the sum of £—, as and for the consideration of the said annuity.

(66.) And whereas the said A. B. hath contracted and agreed with the said C. D. for the absolute sale to him the said C. D. of the said several annuities of £— and £— respectively as and from the — day of — now next ensuing, at or for the price or sum of £—.

(67.) And whereas the said A. B. hath contracted and agreed with the said C. D. for the sale to him of one annuity or yearly sum of £—, for a term of — years, to be determinable on the death of the survivor of &c., and to be charged upon the said messuages &c., comprised in and demised by the said hereinbefore in part recited lease, and the buildings and other erections which have been built upon the said demised premises since the execution of the said lease; and the true and *bond fide* consideration to be given for the purchase of the said annuity is £—, to be paid by the said C. D. And as a further security for the payment of the said annuity, he the said A. B. hath ex-

Contract for
sale of an-
nuities from
a future day.

Contract for
sale of an-
nuity for
years deter-
minable on
lives.—War-
rant of at-
torney to
secure pay-
ment.

ecuted a warrant of attorney, bearing even date with these presents, thereby authorising and empowering certain attorneys therein named, to confess a judgment against the said A. B. in his Majesty's Court of King's Bench, in an action of debt, for the sum of £—, and costs of suit, and judgment to be forthwith entered up against the said A. B., by virtue of the said warrant of attorney.

Agreement to pay expenses of preparing securities for annuity out of consideration, and payment accordingly.

(68.) And whereas on the treaty for the sale and purchase of the said annuity, it was agreed and understood, that the expense of preparing the securities for the said annuity or yearly sum of £—, and obtaining the execution of the same securities, and also of preparing and filing a proper memorial, should be borne and defrayed by the said A. B.; and out of the said sum of £—, the sum of £—, hath been or is to be paid for such expenses.

Grant of annuity for years determinable on life, charged on land, with powers of distress and entry.

(69.) Whereas by an indenture bearing date on or about the &c., and made or expressed to be made between the said A. B. of the first part, the said C. D. of the second part, and E. F. of the third part, in consideration of the sum of £— to the said A. B. paid by the said C. D., he the said A. B. did give,

grant, and confirm unto the said C. D., his executors, administrators, and assigns, during the term of — years, to be computed from the day of the date of the indenture now in recital, if the said C. D. should so long live, one annuity or clear yearly rent-charge of £—, of lawful money of Great Britain, free from all deduction whatsoever, to be payable and issuing out of, and charged and chargeable upon, the messuages, lands, and other hereditaments hereinafter particularly described, and intended to be hereby granted and released, with their appurtenances :

To hold and take the same unto and by the said C. D., his executors, administrators, and assigns, for and during the said term of — years, if the said C. D. should so long live, with such powers of distress and entry upon, and detention of the possession and perception of the rents, issue, and profits of, the said messuages, lands, and other hereditaments, for recovering and compelling the payment of the said annuity when in arrear, as therein are mentioned and contained. And by the said indenture now in recital for the consideration aforesaid, the said A. B., at the request of the said C. D., did demise

Demise for
securing an-
nuity.

unto the said E. F., his executors, administrators, and assigns, the said messuages, lands, and other hereditaments thereby charged with the payment of the said annuity or yearly rent-charge of £—, with their appurtenances: To hold the same unto the said E. F., his executors, administrators, and assigns, for the term of — years, to be computed from the day of the date of the indenture now in recital, upon certain trusts therein declared, for the better and more effectually securing the payment of the said annuity to the said C. D., his executors, administrators, and assigns:

Assignment
of bond for
securing an-
nuity.

And by the said indenture now in recital, for the consideration and purposes therein-before expressed, the said A. B. did bargain, sell, assign, transfer, and set over unto the said C. D., his executors, administrators, and assigns, the said hereinbefore in part recited bond or obligation; and all and every sum and sums of money secured or intended to be secured, or which would be recovered or received, upon or by virtue of the said bond or obligation: To hold and receive the same unto and by the said C. D., his executors, administrators, and assigns,

upon trust, for further securing the payment of the said annuity or yearly sum of £— thereby granted, in manner therein mentioned; and subject thereto, In trust for the said A. B., his executors, administrators, and assigns :

And in the indenture now in recital is contained a clause, empowering the said A. B. to re-purchase the said annuity or yearly rent-charge of £— at the sum of £—, upon giving such notice as therein is mentioned.

(70.) And whereas the said A. B. hath contracted and agreed with the said C. D. for the absolute purchase of the said annuity or yearly rent-charge of £—, at or for the price or sum of £—.

(71.) And whereas all arrears of the aforesaid annuity have been duly paid to the said A. B. up to the day of the date of these presents; and the said A. B. hath agreed to accept and take the sum of £—, in full for the repurchase of the said annuity.

(72.) And whereas the said annuity became in arrear for one year and upwards, and pursuant to the directions contained in the said hereinbefore in part recited power of sale, a public auction was held at the

Power to re-purchase.

Contract for repurchase of annuity.

Payment of arrears and agreement to accept a certain sum for repurchase of annuity.

That annuity became in arrear, whereupon estate charged therewith was sold by auction, pur-

suant to
power of
sale.

Auction Mart, near the Bank of England, London, on the &c., now last past, by the order of the said A. B., for selling the said messuage or tenement, and premises, for all the residue of the said term therein to come and unexpired; and the said C. D. became the purchaser of the same, for the residue of the said term therein mentioned, at or for the price or sum of £—.

Acceptance
of testamen-
tary provi-
sion in lieu
of annuity,
agreed to be
extinguished

(73.) And whereas the said A. B. and C. his wife have accepted the provision made for the said C. by the will of the said B. B., in satisfaction and full discharge of the said annuity of £—, to which the said C. B. became entitled for her life under the said will; and have consented and agreed to join in the conveyance of the said messuages, lands, and other hereditaments hereinafter granted and released, or expressed and intended so to be, for the purpose of extinguishing the same annuity of £—.

Agreement
to accept an
annuity from
heir at law,
in lieu of
dower.

(74.) And whereas the said A. B. hath agreed to accept a clear annuity or yearly sum of £— for her life, in lieu of her dower, and in full satisfaction and discharge of all right and title to the same, and of all damages on account thereof.

APPORTIONMENT.

(75.) And whereas the sum of £— is to Apportion-
the consideration for the purchase of the
said freehold hereditaments, and the sum of
— is to be the consideration for the pur-
chase of the said copyhold heredita-
ments. (a).

(76.) And whereas for the purpose of com- *Id. Another*
plying with the directions of the act, im-
posing *ad valorem* duties on conveyances, it
has been agreed that the sum of £— shall
be considered as the consideration for the
purchase of the freehold hereditaments here-
inafter described, and the sum of £—, the
consideration for the purchase of the copy-
hold hereditaments hereinafter described,
and that the *ad valorem* stamp in respect of
the last mentioned hereditaments, shall be
affixed to the surrender thereof.

(a) The Stamp Act, 55 Geo. III, c. 184, having made
the surrender the “principal” instrument, *i. e.* the in-
strument which is to bear the *ad valorem* stamp in re-
spect of copyholds, it is necessary when copyholds have
been purchased with other property of a different tenure,
at an entire price, to apportion the consideration, in
order that some part of the duty may be paid upon the
surrender.

Apportion-
ment of pur-
chase money
where sev-
eral trustees
entered into
a joint con-
tract for dif-
ferent lands
at an entire
price.

(77.) And whereas it is understood and agreed by and between the several persons, parties to these presents, that the sum of £—, part of the said sum of £—, shall be considered as the consideration for the purchase of the hereditaments comprised in the first schedule to these presents; and that the sum of £—, residue of the said sum of £—, shall be considered as the consideration for the purchase of the hereditaments comprised in the second schedule to these presents.

Agreement
to apportion
rent.

(78.) And whereas upon the treaty for the said contract, it was agreed that the said rent or yearly sum of £— should be apportioned, and that the sum of £—, part thereof, should be deemed to be issuing out of the hereditaments hereinafter released, and that the sum of £—, the residue thereof, should continue payable yearly, according to the reservation of the said yearly rent in the said hereinbefore in part recited lease. (b)

(b) As to apportionment of rent, see Appendix, Note (C).

APPOINTMENT. *See Guardian, Protector, Trustees, &c.*

(79.) And whereas by an indenture, bearing date &c., and made or expressed to be made between the said A. B. and C. his wife of the first part, the said D. D. of the second part, and E. F. of the third part, in consideration of the said lastly hereinbefore in part recited settlement, and for other considerations in the said indenture now in recital expressed or referred to, the said A. B. and C. his wife, in exercise of the power or authority to them given or reserved by the said hereinbefore in part recited indentures of the &c., and the Common Recovery suffered in pursuance thereof, by and with the consent in writing of the said D. D., in manner by the said indentures prescribed, did direct, limit, and appoint that the said messuages, lands, and other hereditaments firstly hereinafter particularly mentioned and described, and intended to be hereby appointed, should thenceforth go, remain, and be to such uses, &c. [See tit. "Uses."]

(80.) And whereas by an indenture, bearing date on or about &c., and made or expressed to be made between A. B. of the

Appoint-
ment under
a power
given by deed
and recovery.

Appoint-
ment, anti-
cipating pin-
money, and

surrender of first part, the said C. B. of the second part
term created to secure same. and E. F. of the third ; the said A. in exercise of the power or powers to be given in and by the said hereinbefore in part recited indentures of &c., or either of the same and in manner thereby prescribed, did absolutely and irrevocably direct and appoint that the said annual sum of £—, by the said hereinbefore in part recited indentures of &c., provided and directed to be raised and paid to her the said A. B. by way of pin-money as aforesaid, or to such persons as she should appoint, and secured by the trusts of the said term of — years, and all arrears thereof if any there were, together with all powers, remedies, and trusts for securing the same should from thenceforth during the joint lives of her the said A. B. and the said C. B. and for all other her estate and term therein go, remain, and be to the use of, and should be paid to, and become the absolute property of, the said C. B. and his assigns, for his and their own proper use and benefit. And by the said indenture, now in recital for the considerations therein mentioned, the said E. F. did surrender &c. [See tit. "Surrender."]

(81.) Whereas by indentures of lease and release, bearing date respectively the &c., and made or expressed to be made between &c., and by a fine *sur cognizance de droit come CEO, &c.*, duly acknowledged and levied by the said A. B. and C. his wife, in or as of — term, in the — year of the reign &c., in pursuance of a covenant for that purpose entered into by the said A. B., in and by the said indenture of release, and by force of a declaration of the uses of the said fine in the same indenture contained; and by an indenture, bearing date &c., and made or expressed to be made between &c. (being an appointment made by the said D. D., in pursuance and in exercise of a power contained in the said indenture of release), in consideration of the sum of £— to the said A. B., paid by the said D. D., the messuages, lands, and other hereditaments hereinafter particularly mentioned and described, and intended to be hereby granted and released, with the appurtenances, were appointed, conveyed, and assured unto and to the use of the said D. D., his heirs and assigns, for ever.

Lease and
release, fine,
and declara-
tion of uses,
and appoint-
ment.

That no joint appointment was made.

(82.) And whereas the said A. B. and C. his wife, did not make any joint appointment of the said sum of £—, or any part thereof, pursuant to the power given to them by the said hereinbefore in part recited indenture of settlement.

That no appointments have been made under any powers now affecting the hereditaments.

(83.) And whereas no appointments have been made under or by virtue of any of the powers contained in the said indenture of release and settlement, which, at the time of the execution of these presents, do affect the hereditaments hereinafter appointed and released, or intended so to be, or the said power of revocation and new appointment, as far as relates to the last mentioned hereditaments.

Title to money under an appointment

(84.) Whereas under and by virtue of a certain deed poll of appointment, under the hand and seal of the said A. B., bearing date on or about the &c., and made in exercise of the powers contained in the said indenture of &c., the said C. D. is entitled to the sum of £—.

APPLICATION. *See Loan.*

Application of money in discharge of debts.

(85.) And whereas the debts owing by the said A. B., and secured by the said

hereinbefore in part recited indenture of the
sum of £—, amount to the sum of £—; and the
sum of £—, part of the said sum of £—,
hath been applied by the said B. B., with
the privity, consent, and approbation of the
said C. D. and E. F., in satisfaction and full
discharge of the debts owing to the same
creditors respectively; and the said B. B.
hath obtained receipts from the same credi-
tors for the monies owing to them re-
spectively.

(86.) And whereas the said A. B. hath on
the day of the date of these presents, at the
request and by the direction and appointment
of the said C. D. and E. F. (testified by their
severally executing these presents), and in
compliance with the provision in that behalf
contained in the said hereinbefore in part
recited Act of Parliament, paid the said
sum of £— into the Bank of England, in the
name and with the privity of the Account-
ant-General of the High Court of Chancery,
to be placed, and the same hath actually
been placed to his account there, *ex parte*
the said B. B., according to the directions
of the said Act of Parliament: And the
said A. B. hath obtained for the said sum

Application
of money
pursuant to
Act of Par-
liament.

of £— the receipt of M. N., one of the cashiers of the Bank of England, under his hand ; and hath also obtained a certificate of the payment of the said sum of £— under the hand of the Accountant-General of the said High Court of Chancery, and the said certificate and receipt have been duly filed.

Agreement
to apply part
of purchase-
money in
part dis-
charge of
mortgage.

(87.) And it hath been agreed by and between the said parties to these presents that the sum of £—, part of the said sum of £—, the purchase money aforesaid, shall be paid and applied by the said C. D. in part satisfaction and discharge of the principal and interest due and owing to the said A. B., or to the said B. B. his trustee, upon the security of the said hereinbefore in part recited indentures of mortgage and further charge, or either of them.

Agreement
to apply a
certain sum
in reduction
of mortgage
debt, and to
exonerate the
purchased
estates from
the residue.

(88.) And it hath been agreed that the said sum of £— shall be paid by the said A. B. in further part and reduction of the same principal monies and interest ; and that the said C. D. shall exonerate the freehold and copyhold lands purchased by the said A. B., from the payment of the residue of the same principal monies and interest.

(89.) And whereas the said A. B. hath paid the sum of £— unto the said C. D., in part discharge of the said sum of £—, the mortgage-money aforesaid, and also all interest in respect of the same sum of £—, up to the day of the date of these presents, so that the principal sum of £— only, now remains due upon, or by virtue of, the said mortgage or security of the &c., as he the said C. D. doth hereby admit and acknowledge; and it hath been agreed that the said sum of £— shall be paid off and discharged by and out of the said sum of £—, the purchase money aforesaid.

(90.) And it hath been agreed and directed by all the persons entitled to the equity of redemption upon the said mortgage, that the said several sums of £— and £—, making together the sum of £—, shall be paid by the said A. B. and C. D. out of the said sum of £—; and that the sum of £—, being the residue of the said sum of £—, shall be divided into three equal parts, and that £—, being one-third part of the said sum of £—, shall be paid to the said D. E., as the surviving trustee under the will of the said

Payment of part of mortgage debt, and agreement to discharge residue out of purchase-money.

Agreement for application of part of purchase-money in paying off mortgage, where there are several persons entitled to the mortgage-money.

B. E. to be held by him, his executors and administrators upon trust, for the persons respectively, who, either in their own right or as assignees under any of the children or grandchildren of the said B. E., are or shall be entitled to the monies arising or produced by or from the part or share of the said B. E. of and in the said messuages, lands, and other hereditaments hereinabove particularly mentioned and described; and that £—, being one other third part of the said sum of £—, shall be paid to the said S. H. and T. B., as the trustees under the will of the said B. H. upon trust for, and for the benefit of the said L. M. and E. his wife, and T. W., R. F., and C. his wife, in the shares, manner, and proportions in which they respectively in their own right, or the said L. M. and R. F. in right of their respective wives, are entitled to the monies arising from the share of the said E. J. of and in the said messuages, lands, and other hereditaments; and that £—, being the remaining third part of the said sum of £—, shall be paid to the said M. H., H. S., and J. W., to be divided by them between or

mongst themselves in equal shares and proportions, [or, according to their respective shares and proportions thereof.]

(91.) And whereas an arrangement hath been made and agreed to by and between all the parties hereto, interested in the said purchase-money or sum of £—, that the same shall be paid by the said A. B. to the said C. D. and E. F., as such assignees as aforesaid, to be afterwards paid and applied by them in the proportions and in the manner agreed upon, or to be agreed upon, between the said C. D. and E. F., and the said S. H. and E. M., without any liability on the part of the said A. B., his heirs, or assigns, to see to the application of the said purchase-money accordingly.

Agreement
for applica-
tion of pur-
chase mo-
ney, per-
sons entitled
thereto hav-
ing conflict-
ing interests.

APPRENTICESHIP.

(92.) Whereas the said A. B. hath agreed with the said C. D. to take the said E. D., his son, as his apprentice, for the term of — years, to be taught and instructed in the trade or business of —, in consideration of the sum of £—, to be paid to the said A. B.,

Agreement
for appren-
ticeship.

at the time of the execution of these presents, and subject to other the terms and agreements hereinafter contained.

Agreement for apprenticeship, apprentice binding himself of his own authority.

(93.) Whereas the said A. B. of his own choice and free will hath agreed to bind himself to the said C. D. as his apprentice for the term of — years, to be taught and instructed in the trade or business of —, under and subject to the terms and conditions hereinafter contained.

Agreement for apprenticeship to a surgeon.

(94.) Whereas the said A. B. hath agreed with the said C. D. to take the said E. D., his son, as his apprentice or pupil, to be taught the art and practice of surgery.

Agreement for an apprenticeship to an attorney.

(95.) Whereas the said A. B. hath agreed with the said C. D. to take the said E. D., his son, as his articled clerk, to be taught the practice of an attorney and solicitor, upon the terms, and for the premium or sum hereinafter mentioned.

Articles of apprenticeship.

(96.) Whereas by an indenture of apprenticeship, bearing date on or about the &c., and made or expressed to be made between the said A. B. and C. B. of the one part, and the said E. F. of the other part, the said C. B. was placed with and bounden to the said E. F., to be taught and instructed in the

made or business of &c., for the term of ~~two~~ years from thence next ensuing, under and subject to the several terms, covenants, and conditions in the said indenture contained.

(97.) Whereas by articles of clerkship, ^{Articles of clerkship.} bearing date on or about the &c., and made or expressed to be made between the said A. B. and C. B. of the one part, and the said E. F. of the other part, the said C. B. was placed with the said E. F. as his articled clerk, to be taught and instructed in the profession or practice of an attorney and solicitor, for the term of five years thence next ensuing, under and subject to the several terms, covenants, and conditions in the said articles contained.

(98.) And whereas the said C. B. hath served with the said E. F. — years of his said apprenticeship, [or, clerkship,] and it hath been agreed by and between the said parties hereto, that the said C. B. should be assigned over unto the said G. H., for the residue of the said term of — years now to come and unexpired. ^{Agreement to assign apprentice or clerk for residue of term.}

(99.) And whereas the said C. B. at the time of the decease of the said E. F., had ^{Agreement with executor of master to take ap-}

prentice or
clerk for re-
sidue of
term.

served — years and upwards of his said **ap**
prenticeship, [*or*, clerkship] under the said
articles [*or*, indenture]. And whereas the
said G. H., at the request of the said K. L.,
as such executor as aforesaid (a), hath agreed
to take the said C. B. as his apprentice for
the residue of the said term of — years now
to come and unexpired (b.)

APPROVAL.

Approval of
titles by
counsel.

(100.) And whereas the several titles of the
said A. B. and C. D. to their respective
moieties of and in the said messuages, lands,
and hereditaments, have been approved of
by the counsel of the said parties hereto
respectively.

Approval of
conveyance
by Master.

(101.) And whereas the said Master hath
settled and approved of the conveyance
hereby made, as appears by his certificate,
signed with his hand, and written in the
margin of the last skin of these presents.

(a) See *ante*, p. 38.

(b) See Bac. Abr. tit. "Master and Servant, and
Apprentice." (G.)

• (102.) And whereas the said Master hath ^{Approval of security by Master.} approved of these presents, as a proper security to be given by the said A. B. to the said C. D., pursuant to the said order, as by the certificate of the said Master in the margin hereof will appear.

(103.) And whereas in pursuance of the ^{Approval of copy of conveyance by Master.} said order, Master A. B., to whom the said cause was referred, hath perused and approved of a copy of these presents, testified by his signing such copy, on the margin thereof.

ARBITRATION. *See Award.*

(104.) And whereas the said A. B. and C. D. have agreed that all controversies, claims, and demands in respect of, or in relation to, or touching the said copartnership property, and the mode of distribution thereof, and the manner in which the same hath, since the commencement thereof, been managed and conducted; and all and every the rights and claims of the said parties hereto, to the said copartnership estate and effects, or to any sum or sums of money in ^{Agreement between co-partners to refer matters in dispute to arbitration.}

respect thereof, in whatever manner the same may have arisen, or do now exist, should also be referred to the judgment and final arbitrament of the said B. B., in order that he may absolutely and definitively declare and settle, according to his uncontrolled discretion and judgment, all and singular the several rights, interests, and claims of the said parties hereto, in manner hereinafter mentioned (c).

Agreement
to refer sub-
ject of suit to
arbitration.

(105.) And whereas the said A. B. and C. D. have agreed to refer the subject of the said Bill of Complaint, and the final determination of the said suit, and the costs of the same, and of the reference and award, and all directions relating to the said costs, and the subject of the said suit to arbitration and umpirage, in manner hereinafter mentioned.

(c) Sometimes it is thought advisable to submit disputes to the arbitrament of two persons; and, in case of any difference of opinion, to empower them to choose an umpire. This arrangement is open to the objection, that the arbitrators may not agree in the appointment of an umpire. If it can be done, the best plan is to fix upon an umpire at the same time that the arbitrators are nominated.

(106.) Whereas divers differences, disputes, and controversies have arisen between the above bounden A. B. and C. his wife, and D. E., and the above named L. M., as to their several and respective claims and interests, under the will of B. B., late of &c., deceased; and they have severally and respectively agreed to submit the same to the arbitrament and final determination of P. R., S. T., and G. H.; and that their award, or the award of any two of them, shall be final and conclusive, both at law and in equity, as well on the part and behalf of the above bounden A. B. and C. his wife, and D. E., their heirs, executors, and administrators, as on the part and behalf of the above named L. M., his heirs, executors, and administrators.

(107.) And whereas the said A. B. alleges, that the said C. D. hath not farmed or cultivated the said arable lands according to the course prescribed by the said recited covenant, (and which is called the six years' course of husbandry); and also that he hath done, or intended to do, divers other acts, matters, and things, contrary to, and in

Agreement to submit claims under will to arbitration.

Agreement to refer matters in dispute (occasioned by alleged breach of covenants in lease) to arbitration, in order to prevent threatened action.

breach of the other covenants, **conditions** and agreements, contained in the said **in-** denture of lease; whereby as the said **A. B.** alleges, the premises so demised to the **said** **C. D.** as aforesaid, have sustained **great** damage and injury. And whereas in **con-** sequence of such breaches, or **alleged** breaches of covenant, by the said **C. D.**, as aforesaid, the said **A. B.** lately threatened to commence certain actions at law, for **the** recovery of damages for the same, or for **the** recovery of the said premises. And whereas in order to prevent such action or actions, the said **C. D.** hath proposed to the said **A. B.**, and the said **A. B.** hath consented and agreed, that it shall be referred to **B. B.** of &c. farmer, (an arbitrator chosen on behalf of the said **A. B.**), and to **A. A.** of **N.**, farmer, (an arbitrator chosen by, and on behalf of the said **C. D.**), and to such other fit and proper person, as the said **A. A.** and **B. B.** shall, by a memorandum in writing, under their hands, to be indorsed thereon, nominate and appoint, or to any two of them, to settle and determine by their award, to be made as hereinafter mentioned, whether

any, or what damage, has been occasioned to the said farm and hereditaments, comprised in the said indenture of lease, in consequence, or by reason of the said C. D. having at any time or times, since the — day of —, farmed or otherwise managed the same contrary to the course of good husbandry; or by reason, or in consequence of the said C. D. having, since the time aforesaid, committed any breach or breaches in otherwise acting contrary to any of the covenants, clauses, conditions, and agreements, in the said indenture of lease contained; and also to settle and determine by the said award, what sum or sums of money (if any) shall be paid by the said C. D. to the said A. B., as a compensation for such damages; and in what manner, and at what time and place the same shall be paid; and also to direct, by the said award, in what order, course, and manner the said premises shall be farmed, managed, and carried on, during the remainder of the said term of — years; and whether any, and what agreements or assurances shall be made or executed by the said C. D. and A. B., or either of them.

Disputes
touching ti-
tles submis-
ted to arbi-
tration by
agreement.

(108.) And whereas divers questions, disputes, controversies, and differences, had at various times heretofore arisen between the said A. B., C. D., and E. F., touching their several rights, titles, interests, claims, and demands in and to the said several hereditaments and premises sought to be recovered by the said A. B. in the said action of ejectment (d) And whereas for the finally ending and settling all such questions, disputes, controversies, and differences between the said parties, and for preventing any further litigation between them, touching or concerning the rights, titles, interests, claims, and demands of the said A. B., C. D., and E. F., and every of them, of, in, or to the same several hereditaments and premises, they the said A. B., C. D., and E. F., by a certain agreement made and entered into, on the &c., between the said A. B., of the one part, and the said C. D., and E. F. of the other part, amongst other things, mutually agree to submit and refer their several rights, titles, interests, claims, and demands,

(d) For recital of action in ejectment, see *ante*, (24.)

and to the said several hereditaments and premises, so in litigation as aforesaid, and ought to be recovered by the said A. B., in the said action of ejectment; and also all other matters in difference between them relating to, or in any wise concerning, the said several hereditaments and premises, and the possession, rents, issues, and profits thereof, to the final award and determination of me, C. B., of Lincoln's Inn, barrister at law; and that I should have full power to award such releases and conveyances, and such possession to be delivered of the said several hereditaments and premises from one or more of them, to the other or others of them, as I should in my judgment think proper, or necessary for doing substantial justice between the said parties respectively; and the said A. B. did thereby for himself, his heirs, executors, and administrators, covenant promise, and agree, to and with the said C. D., and E. F., and their respective heirs, executors, and administrators; and each of them the said C. D., and E. F., for himself, his heirs, executors, and administrators, did thereby covenant, promise, and agree to and with the said A. B., his heirs,

executors, and administrators, in manner and form following, that is to say, that they the said A. B., C. D., and E. F., and each and every of them, should and would in all respects on his, and their respective parts and behalves, well and truly stand to, obey, abide by, perform, fulfil, and keep the award, arbitration, judgment, and determination of me, the said C. B., touching and concerning their several rights, titles, interests, claims, and demands, in and to the said hereditaments and premises sought to be recovered by the said A. B., in the said action of ejectment as aforesaid; and also touching and concerning all matters in difference between them, relating to or in any wise concerning the said premises, or the possession, rents, issues, and profits thereof; and also touching or concerning the payment of the costs of the same action, and of this reference, or any part thereof.

Submission
by deed.

(109.) Whereas by an indenture bearing date on or about the &c., and made or expressed to be made between A. B., of &c., of the one part, and C. D., and E. F., of &c., of the other part, after reciting that various differences had arisen between the said par-

as in difference, relative to the matters herein mentioned, and that a suit in equity is then depending concerning the same, they the said A. B., C. D., and E. F., mutually agreed to refer the disputes then subsisting between them, to the determination of us A. A., and B. B., so that we should make our award in writing under our hands and seals, within the space of — calendar months from the date of the indenture now in recital: and it was thereby further agreed, that we should have full power and authority, if we should think proper, to order the dismissal of any suit which should be then depending between the said parties; and to decree a conveyance from either of the said parties to the other of them, of any mes- suages therein, and hereinafter mentioned, and to direct the consideration money to be paid upon the execution thereof, and also to award the payment by either of the said parties, of the costs and expenses of the said reference. (e)

(e) In an award, it is usual to recite the submission at length. No more, however, need be stated than will be sufficient to show what are the matters in dispute and what the terms of submission.

Submission
by mutual
bonds.

(110.) Whereas A. B., lately commenced an action in His Majesty's Court of King's Bench at Westminster, against C. D., for the recovery of divers sums of money therein alleged to be due and owing to the said A. B., and whereas, in order to put an end to the said action, and to settle all disputes between the said A. B. and C. D., they the said A. B. and C. D., by their respective bonds, bearing date on or about the &c. did respectively become bound each to the other of them, in the penal sum of £—, of good and lawful money of Great Britain, with conditions thereunder respectively written, for the obeying and performing the award, arbitrament, judgment, order, final end, and determination of me the said E. F., an arbitrator indifferently chosen, as well by and on the part and behalf of the said A. B. as of the said C. D., to award, arbitrate, adjudge, order, and determine of and concerning all, and all manner of action and actions, cause and causes of action, suits, specialties, contracts, promises, accounts, reckonings, sums of money, quarrels, controversies, costs, (as well the costs of the said action as also the costs of this present reference, and of this

award to be made in pursuance thereof,) damages and demands whatsoever, both at and in equity, or otherwise howsoever, at any time or times theretofore, had, made, brought, commenced, sued, prosecuted, done, suffered, committed, or depending by or between the said C. D. and the said B., so as the award of me the said arbitrator, should be made and set down in writing under my hand, ready to be delivered to the said parties in difference, on or any time before the &c., then and now next ensuing.

(111.) Whereas at the sitting at Nisi Prius Submission under order of Nisi Prius. after — term last, holden at the Guildhall of the City of London, on or before the Right Honourable — Lord Chief Justice of His Majesty's Court of —, at Westminster, an order was made in a certain cause, wherein A. B. was and is plaintiff, and C. D. was and is defendant, whereby, amongst other things, it was ordered by the said Court, by and with the consent of the said parties, their council and attorneys, that a verdict should be entered for the said plaintiff, damages £—, and costs — shillings, but that such verdict should be subject to the award,

order, arbitrament, final end, and determination of me, the said B. B., who was thereby empowered to direct that a verdict should be entered for the plaintiff and defendant as I should think proper, and to whom the said cause and all matters in difference between the said parties respectively were thereby referred: so as I, the said arbitrator, should make and duly publish my award in writing of, and concerning the matters referred, ready to be delivered to the said parties or to either of them, or, if they or either of them should be dead before the making of my said award, to their respective personal representatives, who should require the same, on or before the, &c., then next ensuing, or on or before any other day, to which I the said arbitrator should by any writing under my hand from time to time, enlarge the time for making my said award.

Submission
by order of
Nisi Prius
in K. B.

(112.) Whereas by a certain order made at the sitting of *Nisi Prius*, held at Westminster-hall, in the Great Hall of Pleas there, in and for the county of Middlesex, on &c. before the Right Honourable A. A., Chief Justice of our Lord the King, assigned to hold pleas before the King himself, in a

certain cause then depending in the same court, wherein A. B. was plaintiff, and C. D. defendant; it was ordered by the said Court, by and with the consent of the said plaintiff and defendant, their counsel and attorneys, that &c.

(113.) Whereas by an order of the Right Honourable A. A., Chief Justice of His Majesty's Court of King's Bench, at Westminster, dated the &c., and made in a certain cause then and now depending in the same court, wherein A. B. is plaintiff, and C. D. defendant; the said Chief Justice, upon hearing the attorneys or agents on both sides, and by their consent, did order (amongst other things) that &c.

(114.) Whereas a certain action at law, depending in His Majesty's Court of Common Pleas, wherein A. B. was plaintiff, and C. D. and E. F., were defendants, came on to be tried at the Assizes holden at L., in and for the county of L., before the Right Honourable A. A., Chief Justice of our said Lord the King, assigned to hold pleas before the King himself, and B. B., Esq., one of the Justices of our said Lord the King, of his Court of Common Pleas at Westminster,

Justices of our said Lord the King, appoint to take the Assizes for the said county of] it was ordered by the said Justices, in op Court, by and with the consent of the ss parties, their counsel and attorneys, that &

Submission
by order of
the Court of
Chancery.

(115.) Whereas by a certain order ma by the Lord High Chancellor, [or, by l Honor the Vice-Chancellor, or, Master the Rolls,] in a certain cause then dependin in the High Court of Chancery, wherein A. I was plaintiff, and C. D. was defendant; it wa by the consent of the said parties and the counsel, ordered (among other things) that &

Power to ap-
point an um-
pire.

(116.) And in the indenture now in recita it was agreed and declared, that if we th said arbitrators did not agree upon ot award, within the space of — calenda months, from the date of the said indenture we should be at liberty to name and appoin any other person as umpire.

Difference
of opinion
between ar-
bitrators.

(117.) And whereas we have taken the mat ters so referred to us into our consideration but cannot agree upon the award to be mad concerning the same.

Appoint-
ment of um-
pire.

(118.) And whereas the said A. B. and C D. being unable to agree upon an award as to the matters so referred to them as afore-

ed, did, by a certain deed-poll or instrument in writing, under their hands and seals, institute and appoint me the said E. F. to umpire between them, touching the matters so referred to the said A B. and C. D., aforesaid, and did thereby refer all and singular the said matters and things unto the judgment and final determination of me the said E. F.

ARMS. *See Surname.*

ASSENT.

• (119.) And whereas the said A. B. hath requested the said C. D. to join in these presents, for the purpose of assenting (a) to

Agreement to join in assignment for the purpose of assenting to legacy.

(a) As all the *personal* property of a testator devolves on the executor, the bequest of a term of years transfers only an *inchoate* interest to the legatee, and his title is not complete until he has obtained the assent of the executor;* and if the executor be a *feme covert*, her husband must join†. If there be two or more exe-

* *Farrington v. Knightley*, 1 P. Wms. 554; *Bennet v. Whitehead*, 2 P. Wms. 646; *Abney v. Miller*, 2 Atk. 593; *Court v. Jeffery*, 1 Sim. & Stu. 106; *Touch.* 455.

† *Cookes v. Bellamy*, Sid. 188; and see *Russel's Case*, 5 Rep. 27.

the said legacy of £—, so given and I queathed to him the said A. B. in and the said hereinbefore in part recited with which he the said C. D. hath agreed to in manner hereinafter mentioned.

Assent of executors to bequest of leaseholds, by a memorandum indorsed on lease.

(120.) And whereas by a memorandum writing, indorsed on the said recited indenture of lease, the said A. B. and C. D., as such executors as aforesaid, assented to the bequest of the said leasehold premises con-

cutors, the assent of any one of them will be sufficient;* and assent may be either before or after probate;† but a purchaser should insist on the will being proved, for the letters of probate, and not the will, are legal evidence.

Assent, when once given, cannot be revoked.‡ The law prescribes no particular form of assent: indeed, an implied assent is sufficient;|| and an assent to the particular estate is an assent to the remainder, *et cetera converso*.§ However, it is always advisable to have the assent manifested by some deed or writing. For "Forms," see 2 *Byth. Prec.* 640—649.

* *Touch.* 456, 484.

† *Middleton's Case*, 5 *Rep.* 28; *Hudson v. Hudson*, 1 *Atk.* 461; *Toller*, 45.

‡ *Touch.* 455, n., *Toll.* 311.

|| *Doe d. Sturges v. Tatchell*, 3 *B. & Ad.* 675; *Toll.* 308; *Bac. Abr.* tit. 'Legacies.' (L.)

§ *Lampet's Case*, 10 *Rep.* 47; *Adams v. Pierce*, 3 *P. Wms.* 12; *Toll.* 309.; *Touch.* 456, 457.

ined in the said hereinbefore in part re-
ted will.

ASSIGNMENT. *See Bond, Mortgage,
Terms for Years, &c.*

(121.) Whereas by an indenture, bearing Assignment
of lease. date on or about the &c., and made or ex-
pressed to be made between A. B. of the one
part, and the said C. D. of the other part,
in consideration of the sum of £— to the
said A. B. paid by the said C. D., all and
singular the messuages or tenements, lands,
and other the premises comprised in and de-
mised by the said hereinbefore in part re-
cited indenture of lease, were assigned unto
the said C. D., his executors, administrators,
and assigns, for all the residue and remain-
der then to come and unexpired of the said
term of — years, subject nevertheless to the
payment of the rent, and to the perform-
ance of the covenants in the said indenture
of lease reserved and contained, and on the
part of the tenant or lessee to be paid, per-
formed, and kept.

(122.) And by the said indenture now in Assignment
of lease with
Licence of
lessor. recital, for the considerations therein and

hereinbefore mentioned, and by virtue of the licence and consent in writing of the said E. F., all and singular, &c. [as in *La Recital.*]

Assignment
of term, ori-
ginal lease
not before
recited.

(123.) And whereas by an indenture, bearing date on or about the &c., and made or expressed to be made between A. B. of the one part, and the said C. D. of the other part, for the considerations therein mentioned, all &c. were assigned unto the said C. D., his executors, administrators, and assigns, for the residue and remainder then to come and unexpired of a term of — years, created by a certain indenture of lease, bearing date on or about the &c., and made or expressed to be made between A. A. of the one part, and the said A. B. of the other part.

Mesne and
ultimate as-
signments.

(124.) And whereas by divers mesne assignments and acts in the law, and ultimately by an indenture, bearing date on or about the &c., and made or expressed to be made between A. B. of the one part, and the said C. D. of the other part, the messuages, lands, and other hereditaments comprised in the said term of — years, with their appurtenances, became vested in the said C. D., for all the residue and remainder of the said term.

ATTORNEY. *See Letter of Attorney, Warrant of Attorney.*

AUCTION.

(125.) And whereas the said messuages, lands, and other hereditaments hereinafter particularly mentioned and described, and intended to be hereby granted and released with their appurtenances, were on or about &c., put up to sale by public auction, in &c., and on such sale the said A. B., was declared to be the highest bidder for, and became the purchaser of, the said messuages, lands, and hereditaments, at or for the price or sum of £—, [exclusive of timber growing on the said lands, which since such sale hath been valued, and agreed to be purchased by the said A. B., at or for the price or sum of £—.]

(126.) And whereas on the &c., the said A. B. and C. D. (as such assignees as aforesaid) caused the said messuages and other hereditaments hereinafter mentioned and described, and intended to be hereby granted and released with their appurtenances, to be put up to sale by public auction, by &c., at

AUCTION.

124

&c., according to certain printed particulars and conditions produced at the time of such sale, at which sale E. F. and G. H., were declared to be the highest bidders for, and purchasers of, the said messuages and other hereditaments, at or for the price or sum of £—, and the said E. F. and G. H., at the same time paid the sum of £— to the said A. B. and C. D., as a deposit and in part payment of the said sum of £—, in pursuance of the said printed conditions for sale.

That estates
were put up
to auction in
lots.—Sale of
one lot, and
payment of
deposit.

(127.) And whereas the said A. B. on the &c., caused the lands and other hereditaments hereinafter particularly mentioned and described, and intended to be hereby granted and released with their appurteances, (among and together with other hereditaments) to be put up to sale by public auction, by &c., in &c., in lots, according to certain printed particulars and conditions of sale produced at the time of such sale.

(128.) And whereas at the said sale the said C. D. was declared to be the highest bidder for, and purchaser of, the said lands and other hereditaments, (being the lands and hereditaments comprised in lot — of the said printed particulars,) at or for the price

sum of £—; and the said C. D. at the same time paid the sum of £— to the said A. B. as a deposit, and in part payment of the said sum of £—, according to the said printed conditions.

(129.) And whereas the said A. B. and C. D., as such trustees as aforesaid, lately caused the said messuages, lands, and hereditaments, in and by the said will of the said E. F., deceased, directed to be sold, to be put up for sale by public auction; but no person having bid an adequate price for the same, the said messuage, lands, and hereditaments were bought in.

That trust
property was
put up for
sale, but
bought in.

AWARD. *See Arbitration.*

(130.) And whereas by a deed poll or instrument in writing, under the hand and seal of the said A. B., bearing date, &c., after reciting that, (d) &c., he the said A. B.,

(d) The subject of dispute and terms of submission are sometimes introduced in this way, but as a general rule, it is better not to recite them parenthetically; for recitals within recitals commonly tend only to complicate the statements that are made.

did award, order, adjudge and determine that, &c.

Rule of Court
enlarging
time for
making
award.

(131.) And whereas by reason of my being unable to make my award within the time limited by the said order, the time for making my award was by certain rules of the said Court of King's Bench, from time to time, duly enlarged: and whereas by a certain other rule of the said Court of King's Bench, made on &c., upon hearing counsel for the plaintiff and defendant, and by their consent, it was ordered, that the time limited for me, the said arbitrator, making my award between the said parties should be further enlarged until the, &c.

Indorse-
ments on or-
der enlarging
time for
making
award.

(132.) And whereas I, the said A. B., did by an indorsement, [or, by — several indorsements] on the said order, enlarge the time for making my said award, until the &c.

BANKERS.

Intention to
commence
banking ac-
count, and
agreement to
convey estate
as a security
for money
overdrawn.

(133.) Whereas the said A. B. is desirous of keeping an account with the said C. D. and E. F., as bankers, and to keep cash with them on a banking account, according to the usual and ordinary course, and upon the terms of the business done by them as bank-

s; and the said A. B. will sometimes have occasion to draw bills on the said C. D. and E. F., or on their correspondent in London on their account, or to have money from them to a greater amount than the money which he may then have in the hands of the said C. D. and E. F.; and the said A. B. is at this time indebted to the said C. D. and E. F., in the sum of £—, on the balance of accounts between them. And whereas the said A. B. hath for the security and satisfaction of the said C. D. and E. F., proposed and agreed to convey the said messuage, lands, and other hereditaments, in manner hereinafter mentioned.

(134.) And whereas the said A. B. hath requested the said C. D. and E. F. to accept and discount notes, drafts, and bills of exchange, for him the said A. B., and also to advance and lend him such sum and sums of money, as he may require for his convenience and accommodation, in order to enable him to carry on the said business; and also to keep a cash or running account with him the said A. B., which they the said C. D. and E. F., have agreed to do upon having the balance of the said cash or running ac-

Intention to
open bank-
ing account:
re-payment
of advances
to be secur-
ed by bond.

count for the time being, which shall or may at any one time hereafter become due and owing from the said A. B., or any person or persons with whom he may hereafter enter into partnership, to them the said C. D. and E. F., or other the person or persons for the time being, carrying on the said business, now carried on under the firm of, &c., for or by reason of any drafts, notes, or bills of exchange, to be drawn, or discounted upon, with, or by the said C. D. and E. F., or such other person or persons as aforesaid, or by reason of any money to be advanced on the said cash account; or by reason of any transactions, matter, or thing whatsoever to be had between the said A. B. and the said C. D. and E. F., or such other person or persons as aforesaid, secured to be paid to them the said C. D. and E. F., their executors, administrators, and assigns, or such other person or persons as aforesaid, by the joint and several bonds of the said A. B., and of the said B. B. and D. D., as his sureties, in the penal sum of £—, so nevertheless, that no greater sum be ultimately recoverable on the said bond; nor the said A. B.

and B. B. and D. D., any or either of them, their, any, or either of their heirs, executors, or administrators, be liable to pay more by virtue thereof than the sum of £—.

(135.) Whereas the said A. B. hath from time to time for several years last past kept cash with the said C. D. and E. F., as his bankers, and hath from time to time drawn for the same as occasion hath required; and the said A. B. finding that in the course of his business he shall often have occasion for more money than he hath, or shall or may have, in the hands of his bankers, hath applied to the said C. D. and E. F., and desired them to permit him to overdraw his account with the said C. D. and E. F., which they have agreed to do on their being fully indemnified, of, from, and against all losses, costs, charges, damages, and expences which they or any of them shall or may sustain, or be put unto, for or by reason or means thereof, in manner hereinafter mentioned.

(136.) Whereas the above bounden A. B., now keeps an account with the said C. D. and E. F., as his bankers, and he is desirous of continuing to keep such account with them, and to keep cash with them on a

banking account, according to the usual and ordinary course and upon the terms of business done by them as bankers; and the said A. B. will sometimes have occasion to draw bills on the said C. D. and E. F., or the partner or partners for the time being in the said bank, or to have money from them to a greater amount than the money which he may then have in the hands of the said C. D. and E. F., or the partner or partners for the time being in the said bank. And the said A. B. is at this time indebted to the said C. D. and E. F. in the sum of £—, on the balance of accounts between them. And whereas the said A. B., and, at his request and as his surety, the said A. A. have for the security and satisfaction of the said C. D. and E. F., proposed and agreed to enter into the above written bond or obligation, subject to the conditions hereinafter contained.

That bankers have allowed account to be overdrawn: debtor agreeing to assign policy as a security.

(137.) And whereas the said A. B. and C. D. are the bankers of the said E. F., and have, upon his request, permitted him to overdraw his account on his engaging to secure the repayment of the sums which should be so overdrawn by him with interest for the same, by an assignment of the said

policy of assurance, and to subject the dividends and annual produce of the said sum of £—, three per cent. consolidated annuities to the payment of the said annual sum or premium of £—.

BANKRUPTCY.

(138.) Whereas a *fiat* for a prosecution of ^{Fiats of bank-} bankruptcy, bearing date &c., hath been ^{ruptcy.} awarded and issued against A. B. of, &c., who hath been thereunder duly adjudged a bankrupt (b).

(139.) And whereas at a sitting of one of the commissioners of the Court of Bankruptcy, held on the &c., the said commissioners did constitute and appoint C. D. to be the official assignee of the said bankrupt's estate.

(140.) And whereas at another sitting of ^{Appoint-} one of the commissioners of the said Court, ^{ment of} held on the &c., the day fixed by notice in ^{official assignee by com-} the London Gazette, for the choice of an ^{mmissioner.}

(b) See 1 & 2 W. IV., cap. 56, s. 12; which directs a *fiat* to be issued in lieu of a commission.

assignee or assignees of the estate and effects of the said A. B., [or, at a meeting held for that purpose] the major part in value of the creditors of the said A. B. then present, whose debts respectively amounted to the sum of £10, and upwards, did constitute and appoint the said A. A., B. B., and C. C., to be the assignees of the estate and effects of the said A. B. (c).

(c) By the new Act 1 & 2 W. IV., c. 56, it is enacted, " That when any person hath been adjudged a bankrupt, all his personal estate and effects, present and future, which by the laws now in force, may be assigned by commissioners acting in the execution of a commission against such a bankrupt, shall become absolutely vested in and transferred to the assignees or assignee for the time being, by virtue of their appointment, without any deed of assignment for that purpose, as fully to all intents as if such estate and effects were assigned by deed to such assignees and the survivor of them; and as often as any such assignees shall die, or be lawfully removed, and a new assignee duly appointed, all such personal estate as was then vested in such deceased or removed assignee shall, by virtue of such appointment, vest in the new assignee, either alone or jointly with the existing assignee, as the case may require." Sect. 25. And it is further enacted, " That where any person shall have been adjudged a bankrupt, all such present and future real estate of such bankrupt, whether in the United Kingdom of Great Britain and Ireland, or in any of the dominions, plantations, or colonies belong-

(141.) And whereas the said A. A. did, some time since, prefer his petition to the Court of Review, praying that he might be discharged from being one of such assignees as aforesaid, and that he might release all his right, title, and interest of, in, and to the said bankrupt's estate and effects, unto the said B. B. and C. C., the said two other assignees; and the matter of the said petition coming on to be heard on or about the &c., it was ordered that the said A. A. be discharged from being one of the assignees of the estate and effects of the said A. B. the bankrupt, and that he should forthwith execute a release to the said B. B. and

Petition to the Court of Review, praying to be discharged from the office of assignee, and order accordingly.

ing to his Majesty, as by the said recited Act [6 Geo.IV., c. 16.] is directed to be conveyed by the commissioners to the assignees, shall vest in such bankrupt's assignee or assignees for the time being, by virtue of his or their appointment, without any deed of conveyance for that purpose; and as often as any such assignee or assignees shall die, or be lawfully removed or displaced, and a new assignee or assignees shall be duly appointed, such of the aforesaid real estate as shall remain unsold or unconveyed shall, by virtue of such appointment, vest in the new assignee or assignees, either alone or jointly with the existing assignees, as the case may require, without any conveyance for that purpose."

Sect. 26.

C. C., the other remaining assignees of all his estate, right, title, and interest, of, in, and to the said bankrupt's estate and effects; and that such release should be settled by a commissioner, in case the parties should differ about the same, and the expense of such release was to be borne by the said A. A.

Commission
of bank-
ruptcy.

(142.) And whereas a commission of bankruptcy under the great seal of Great Britain was, on or about the &c., awarded and issued against the said A. B., and he was thereupon duly found and declared a bankrupt.

Bargain and
sale from
commission-
ers to assign-
nees.

(143.) And whereas by an indenture of bargain and sale, (which has been duly enrolled) bearing date on or about &c., and made or expressed to be made between &c. (the major part of the commissioners named in and appointed by the said commission,) of the one part, and the said C. D. and E. F. of the other part, all &c. were assigned unto and to the use of the said C. D. and E. F., their heirs, executors, administrators, and assigns; in trust, nevertheless, and to and for the use of them the said C. D. and E. F., and all such other creditors of the

said A. B. who had then sought, or who should thereafter in due time come in and seek relief under and by virtue of the said commission (d).

(144.) And whereas the said A. B. and C. D., as such assignees as aforesaid, have refused and declined to accept the said hereinbefore in part recited agreement for a lease, [or, indenture of lease] on behalf or as part of the estate of the said bankrupt (e).

(145.) And whereas the said A. B. and C. D. are the assignees of the estate and effects of the said E. F., under and by virtue of a *fiat*, [or, commission] of bankruptcy awarded and issued against him, and as such are entitled to, &c.

(146.) And whereas the said A. B. duly proved the said debt of £—, under the said *fiat* [or, commission].

(147.) And whereas a dividend of — shillings in the pound in respect of the said debt of £—, amounting in the whole to the

Refusal of
assignees to
accept agree-
ment or
lease.

Title as assign-
nees.

Proof of
debt.

Receipt of
dividend.

(d) *Ante*, p. 132, note.

(e) See Lord Henley's Digest of the Bankrupt Law, p. 237.

sum of £—, hath been received by the said A. B.

That bankrupt has obtained his certificate.

(148.) And whereas the said A. B. hath obtained a certificate of his conformity under the said *fiat* [*or, commission*] of bankruptcy ; and the same certificate hath been duly allowed by the Court of Review [*or, by the Lord High Chancellor of Great Britain*].

BARGAIN AND SALE. *See Lease.*

Bargain and sale.

(149.) And whereas by indenture of bargain and sale, duly enrolled, bearing date on or about the &c., and made or expressed to be made between A. B. of the one part, and the said C. D. of the other part, in consideration of the sum of £— to the said A. B., paid by the said C. D., all and singular the messuages and other hereditaments hereinafter particularly described, and intended to be hereby granted and released, with the appurtenances, were (among and together with divers other hereditaments,) bargained and sold unto and to the use of the said C. D., his heirs and assigns, for ever.

(150.) In his actual possession, now being [or, in him now actually vested (f)] by virtue of a bargain and sale to him thereof, made by the said A. B., in consideration of five shillings, by an indenture, bearing date the day next before the day of the date of these presents, for the term of one whole year, commencing from the day next before the day of the date of the said indenture of bargain and sale, and by force of the statute made for transferring uses into possession. (g).

(f) *Ante*, p. 40.

(g) "Or, perhaps, to speak more correctly, by transferring or turning uses into possessions." Sugd. Pow. p. 7.

In Ireland no bargain and sale need be made, for, by the Irish Statute, 9 Geo. II., c. 5, s. 6, it is enacted, "That in all cases the Recital of a lease for a year in the deed of release, shall be deemed and taken to be full and sufficient evidence of such lease." This statute was rendered perpetual, by the 1 Geo. III., c. 3, which also enacted, "That in all cases of pleading deeds of lease and release, wherein it may be necessary to allege the bringing such deeds into court, it shall be sufficient to allege the bringing into court the deed of release, in which the Recital of such lease shall, to all purposes whatsoever, be as effectual as producing the same." In most of the Colonies a bargain and sale is unnecessary, as freeholds can generally be conveyed by deed without attornment, or any livery of seisin.

BILL IN EQUITY. *See Suit.*

BILL OF EXCHANGE.

*Bill of ex-
change, and
acceptance.*

(151.) And whereas the said A. B. hath drawn upon the said C. D., and the said C. D. hath accepted a certain bill of exchange, bearing even date with these presents, for the sum of £—, payable — days [*or, months*] after date unto E. F., or his order.

*Id. Another
form.*

(152.) And whereas the said A. B. hath this day drawn upon the said C. D. a bill of exchange, dated &c., and payable to the said E. F., or order, — days [*or months*] after date, for the sum of £—, with interest for the same in the mean time; which said bill of exchange hath been accepted by the said C. D., and delivered to the said E. F., as he the said E. F. doth hereby admit and acknowledge.

*That indor-
see having
lost bill
within time
of payment,
applied to
drawer to
give him an-
other, which
he agreed to
do, upon
being indem-
nified.*

(153.) Whereas a bill of exchange, dated on or about the &c., was drawn by the above-named A. B. upon, and accepted by, C. D., and the said A. B. thereby requested the said C. D., — months after the date

thereof, to pay to the order of the said A. B. the sum of £—, for value received, and which said bill was indorsed by the said A. B. to the above bounden E. F., who claims to be entitled to receive payment of the said sum of money, and the said bill of exchange hath been lost by the said E. F. within the time thereby limited for the payment of the same; and he hath thereupon in pursuance of the statute (*h*) in such case made and provided, applied to the said A. B. to give him another bill of the same tenor with the said first mentioned bill, which he hath agreed to do, upon being indemnified in manner hereinafter mentioned.

(154.) Whereas a certain draft or bill was on or about the &c., drawn by A. B. upon, and accepted by, the said C. D. for the sum of £—, payable — days [or, months] after the date thereof, to the order of E. F., who indorsed and delivered the same to G. H., by whose clerk it hath been lost or mislaid: And whereas the said C. D., at the special instance and request of

Agreement
by acceptor
to pay lost
bill, on
being indem-
nified.

BILL OF SALE.

the said G. H., hath agreed to pay him the amount of the said bill, upon being indemnified in manner hereinafter mentioned.

BILL OF SALE.

*Bill of sale
by Sheriff.*

(155.) And whereas by an indenture bearing date on or about the, &c., and made or expressed to be made between A. B., Esq. sheriff of the county of L—, of the one part, and C. D. of, &c., of the other part, in consideration of the sum of £—, to the said sheriff paid by the said C. D., all and singular the said messuage or tenement, lands and premises, were assigned unto the said C. D., his executors, administrators, and assigns, for all the residue and remainder then to come and unexpired of the said term of — years, absolutely and in as full and ample manner and form as the said sheriff, at or before the execution of the indenture now in recital, held and enjoyed the same; subject nevertheless to the payment of the said yearly and increased rents, if the same should accrue, and to the performance of such of the covenants, provisions, conditions,

and agreements contained in the said recited indenture of lease as on the part and behalf of the lessee or assignee, his executors, administrators, and assigns, were or ought to be paid, observed, performed, and kept. (i)

(156.) Whereas by a bill of sale or instrument in writing, bearing date on or about the &c., and made, or expressed to be made, between A. B. of the one part, and the said C. D. of the other part, in consideration of the sum of £—, to the said A. B. paid by the said C. D., All that ship or vessel called —, with all and every the tackle and appurtenances thereto belonging, were bargained, sold, assigned, transferred, and set over unto the said C. D., his executors, administrators, and assigns for ever.

(157.) Whereas by a bill of sale or instrument in writing, bearing date on about the &c., and made, or expressed to be made, between A. B. of the one part, and the said C. D. of the other part, in consideration of

(i) In an assignment by a Sheriff, it is usual to recite the writ under which the property was taken. See tit. "Writ."

the sum of £—, to the said A. B. paid by the said C. D., all those — undivided sixty-four parts or shares (the whole into sixty-four parts or shares, being considered as divided) (k), of him the said A. B., of, and in the ship or vessel called the —, and of and in all and every the tackle and appurtenances thereto belonging, were bargained, sold, assigned, transferred, and set over unto the said C. D., his executors, administrators, and assigns for ever.

*Certificate of
registry.*

(158.) And whereas the said ship or vessel hath been duly registered pursuant to act of parliament; a copy of the certificate of which registry is as follows: [*certificate of registry, verbatim. (l)*]

(k) The Registry Act, 3 & 4 W. IV. c. 55, s. 32, enacts, that the property in every ship or vessel of which there are more than one owner, shall be taken and considered to be divided into sixty-four equal parts or shares, and that the proportion held by each owner shall be described in the registry as being a certain number of sixty-four parts or shares. The repealed act, 6 Geo. IV. c. 110, contained a similar provision.

(l) The Registry Act enacts, "That when and so often as the property in any ship or vessel, or any part thereof, belonging to any of His Majesty's subjects, shall, after registry thereof, be sold to any other or others of His Majesty's subjects, the same shall be

(159.) And whereas a memorandum of the said bill of sale or transfer hath been duly indorsed (*m*), upon the said certificate of registry; and the said C. D. is thereby certified to be, and now is, the owner and proprietor of the said ship or vessel called the — [or, of the said — sixty-four parts or shares of and in the said ship or vessel called the —.]

Indorsement
of bill of
sale upon
certificate of
registry.

BOND.

(160.) And whereas the said several persons parties to the said in part recited articles (*n*) of agreement, have agreed to enter

Agreement
to enter into
bond.

transferred by bill of sale, or instrument in writing, containing a Recital of the certificate of registry of such ship or vessel, or the principal contents thereof, otherwise such transfer shall not be valid for any purpose whatever, either in law or in equity: Provided always, that no bill of sale shall be deemed void by reason of any error in such recital, or by the recital of any former certificate of registry, instead of the existing certificate, provided the identity of the ship or vessel intended in the recital be effectually proved thereby." Sect 31. See *Biddell v. Leeder*, 1 B. & C. 327.

(*m*) See 3 & 4 W. IV. c. 55, s. 29.

(*n*) See tit. "Agreement." (55.)

the sum of £—, to the said A. B. paid to the said C. D., all those — undivided sixty-four parts or shares (the whole in sixty-four parts or shares, being considered as divided) (k), of him the said A. B., of, and in the ship or vessel called the —, and in all and every the tackle and appurtenances thereto belonging, were bargained sold, assigned, transferred, and set over unto the said C. D., his executors, administrators, and assigns for ever.

Certificate of registry. (158.) And whereas the said ship or vessel hath been duly registered pursuant to act of parliament; a copy of the certificate of which registry is as follows: [certificate of registry, *verbatim.* (l)]

(k) The Registry Act, 3 & 4 W. IV. c. 55, s. 32, enacts, that the property in every ship or vessel of which there are more than one owner, shall be taken and considered to be divided into sixty-four equal parts or shares, and that the proportion held by each owner shall be described in the registry as being a certain number of sixty-four parts or shares. The repealed act, 6 Geo. IV. c. 110, contained a similar provision.

(l) The Registry Act enacts, "That when and so often as the property in any ship or vessel, or any part thereof, belonging to any of His Majesty's subjects, shall, after registry thereof, be sold to any other or others of His Majesty's subjects, the same shall be

(159.) And whereas a memorandum of the <sup>Indorsement
of bill of
sale upon
certificate of
registry.</sup> bill of sale or transfer hath been duly indorsed (m), upon the said certificate of registry; and the said C. D. is thereby certified to be, and now is, the owner and proprietor of the said ship or vessel called the — [or, of the said — sixty-four parts or shares of and in the said ship or vessel called the —.]

BOND.

(160.) And whereas the said several persons parties to the said in part recited articles (n) of agreement, have agreed to enter <sup>Agreement
to enter into
bond.</sup>

transferred by bill of sale, or instrument in writing, containing a Recital of the certificate of registry of such ship or vessel, or the principal contents thereof, otherwise such transfer shall not be valid for any purpose whatever, either in law or in equity: Provided always, that no bill of sale shall be deemed void by reason of any error in such recital, or by the recital of any former certificate of registry, instead of the existing certificate, provided the identity of the ship or vessel intended in the recital be effectually proved thereby." Sect 31. See *Biddell v. Leeder*, 1 B. & C. 327.

(m) See 3 & 4 W. IV. c. 55, s. 29.

(n) See tit. "Agreement." (55.)

into the above written bond or obligation, conditioned as hereinafter mentioned.

Agreement
to join in
bond as a
surety.

(161.) And whereas the above bounden A. B., hath agreed to join with the above bounden C. D., in the above written bond or obligation, as a surety for the said C. D., his heirs, executors, and administrators.

Agreement
to join in
annuity bond
as sureties.

(162.) And whereas at the instance and request of the said A. B., the above bounden C. D. and E. F. have agreed to join in the above written bond or obligation, subject to the condition hereunder written, as the sureties of the said A. B., his heirs, executors, and administrators, for the due and punctual payment of the said annuity of £—.

That principal
agreed
to give sure-
ty a counter
bond.

(163.) And whereas the said A. B., executed the said recited bond, at the request of, and as surety for, the said C. D., upon the said C. D. agreeing to enter into the above written bond or obligation, conditioned as hereinafter mentioned.

Agreement
to secure
performance
of contract
by joint
bond of
principal
and sureties.

(164.) And whereas it hath been agreed that the said A. B. should secure the due performance of his said contract by the joint and several bond or obligation of himself and two sureties, in the penal sum of £—.

(165.) And whereas upon the treaty for <sup>Agreement
on sale of es-
tate to enter
into bond of
indemnity.</sup> the sale and purchase of the said mess-
uages, lands, and other hereditaments, it

was agreed that the said A. B., and also the
said C. D., as his surety, should enter into a
bond for the indemnity of the said mayor,
commonalty, and citizens, their successors
and assigns, according to the form and effect
of the above written bond or obligation, and
the condition thereof hereinafter contained.

(166.) And whereas by a bond or obliga- <sup>Bond for
payment of
money.</sup> tion in writing, bearing date on or about the
&c., under the hand and seal of the said
A. B., he the said A. B. became bound unto
the said C. D., in the penal sum of £—, with
a condition thereunder written for making
void the same, on payment by the said A. B.,
his heirs, executors, or administrators, unto
the said C. D., his executors, administrators,
or assigns, of the sum of £—, together with
interest for the same, after the rate, on or at
the days or times, and in manner therein
mentioned and appointed for payment of the
same respectively.

(167.) And whereas by a certain bond or <sup>Bond for
quiet enjoy-
ment of pur-
chased pro-
perty.</sup> obligation in writing, under the hand and
seal of the said A. B., bearing even date with

the lastly hereinbefore in part recited indenture of release, the said A. B. became bound to the said C. D. in the penal sum of £—, with a condition thereunder written for making void the same, if the said C. D., his heirs or assigns, should from time to time, and at all times thereafter, peaceably and quietly enter into, have, hold, use, occupy, possess, and enjoy the said pieces or parcels of ground, hereditaments, and premises, in and by the said lastly hereinbefore in part recited indenture of lease and release, expressed and intended to be conveyed and assured unto and to the use of the said C. D., his heirs and assigns for ever, and every part and parcel thereof, with their and every of their appurtenances; and should receive and take the rents, issues, and profits of all and every the same hereditaments and premises to and for the only use and benefit of the said C. D. and his heirs, free from and without any suit, trouble, hindrance, claim, or disturbance of, from, or by any of the issue of the said A. A. and S. his wife, (if any such there should be), or, of, from, or by any other person or persons whomsoever, claiming or to claim, any estate, right, title, or interest of, in, to,

out of the same premises, or any part or parts thereof, under or by virtue of any of the uses, trusts, or limitations, limited, expressed, or contained in the settlement hereinbefore mentioned or referred to.

(168.) And whereas for the further securing of the said sum of £— and interest, he, the said A. B., by his bond or obligation in writing, bearing even date with the said hereinbefore in part recited indenture, became bound unto the said C. D., in the penal sum of £—, with a condition thereunder written for making void the same, on payment by the said A. B., his heirs, executors, or administrators, to the said C. D., his executors, administrators, or assigns, of the said sum of £— and interest, at the time and in manner therein, and in the said hereinbefore in part recited indenture, mentioned and appointed for payment of the same respectively.

Bond as a further security for repayment of loan.

(169.) Whereas the said A. B., in contemplation of the marriage then intended, and which was shortly afterwards duly had and solemnized, between the said A. B. and the said C. B., now his wife, then called M. H., duly executed and gave unto the

Bond (in contemplation of marriage) to secure annuity, &c., to wife, in the event of her surviving her husband.

1

said F. M., a bond or obligation in writing bearing date, &c., and thereby became bound unto the said F. M. in the penal sum of £— with a condition thereunder written for making void the same, if the said intended marriage should take effect and be solemnized and the said C. B. should happen to survive and outlive the said A. B., her then intended husband, and the heirs, executors, or administrators of the said A. B., should well and truly pay unto the said C. B. and her assigns, yearly, and every year, during her life, one annuity, or yearly sum of £—, free and clear of and from all charges or incumbrances, for, or in respect of any parliamentary taxes, on the &c., in every year, by equal portions; and also if the said A. B. should, in and by his last will and testament, or otherwise, secure to the said C. B., and her assigns, during the term of her life, the use and enjoyment of one messuage, tenement, or dwelling-house, fit and proper for her own residence; and if the heirs, executors, or administrators of the said A. B., should permit and suffer the said C. B., and her assigns, peaceably, and quietly to hold and enjoy the same accordingly.

(170.) And whereas by a bond or obligation in writing, duly recorded as a probative writ in the books of council and session at Edinburgh, in that part of the United Kingdom of Great Britain, called Scotland, bearing date, &c., &c.

Bond recorded at Edinburgh as a probative writ.

(171.) And whereas the said A. B., by his bond or obligation in writing, under his hand and seal, bearing date on or about the &c., became bound to C. D. in the sum of £—, and the said bond or obligation in writing, after reciting that, &c., is conditioned to be void, if, &c.

Bond with recitals.

(172.) And whereas the said A. B. hath agreed to assign the said hereinbefore in part recited bond and the principal money and interest thereby secured, in manner hereinafter mentioned.

Agreement to assign bond.

(173.) And whereas by an indenture bearing date on or about, &c., and made or expressed to be made between the said A. B., of the one part, and the said C. D. of the other part, for the consideration therein mentioned or referred to, the said A. B. did bargain, sell, assign, transfer, and set over unto the said C. D., his executors, administrators, and assigns, the sum of £—, so se-

Assignment of bond upon trust.

cured by the said hereinbefore in part recited bond, and every part thereof, together with the said bond (a), and all advantage thereof, or thereunder: to hold the same unto the said C. D., his executors, administrators, and assigns, upon trust, &c.

*Cancellation
of bond.*

(174.) And whereas the said bond hath been delivered up to be cancelled, and the said A. B. hath agreed to execute and give the release hereinafter contained.

BOUNDARIES. *See Parcels.*

CERTIFICATE. *See Bankruptcy.*

*Certificate of
his Majesty's
Commiss-
sioners of
woods and
forests, certi-
fying that
they had
contracted
for sale of
part of
crown lands.*

(175.) And whereas by a certificate bearing date on or about, &c., under the hands and seals of A. B. and C. D., two of the Commissioners of His Majesty's woods, forests, and land revenues, it was certified that in pursuance of a warrant from the Right

(a) *If judgment has been obtained on the bond, add, "and the judgment so recovered thereon as aforesaid, and all benefit and advantage whatsoever to be had or derived therefrom, or from any process, extent, or other execution or executions to be thereupon had, sued out, or executed,"*

onorable, &c., the Commissioners of His Majesty's Treasury, bearing date, &c., the said A. B. and C. D., for and on the behalf of His Majesty, had contracted and agreed with the said B. B. for the sale to the said B. B., of all, &c., at or for the price or sum of £—, to be paid by the said B. B. into the Bank of England, and carried into the Woods' and forests' fund; and from and immediately after the payment of the said sum into the Bank, and the enrolment of the certificate, and the receipt for the said purchase money, in the office of the auditor of the land revenues for the said county of M., that thenceforth for ever, the said B. B. his heirs and assigns, should be adjudged, deemed, and taken to be in the actual seisin and possession of the said hereditaments and premises so purchased, freed, and discharged from all claims of His Majesty, his heirs and successors, by force and virtue of an act of Parliament made and passed in the &c., intituled, &c.

CESSER. *See Terms for Years.*

CHARGE. *See Mortgage, Rent-charge.*

CODICIL. *See Will.*

COGNOVIT.

*Cognovit
actionem.*

(176.) And whereas by a cognovit, bearing date on or about the, &c., the said A. B. confessed the said action, and that the plaintiffs had sustained damages to the amount of £—, besides their costs and charges, to be taxed by the Master; and the said A. B. the defendant, thereby also declared, that in case he should make default in payment of the sum of £—, being the balance of the debt in the said action, (after allowing to the said A. B., the set-off of which he had given notice in the said action,) together with the said costs, on the, &c., the said C. D. and E. F., the plaintiffs, should be at liberty to enter up judgment, as of — term then next, for the said sum of £—, and to sue out execution thereof for the said sum of £—, and also for the costs of entering up such judgment, and of suing out execution thereon, officers' fees, sheriff's poundage, costs of levying, and all other incidental expenses; and the said A. B. did thereby also undertake not to bring any writ of error, nor file any bill in equity, nor

do any matter or thing whatsoever, to delay the said plaintiffs in the said action from entering up their judgment, or suing out execution thereon, as aforesaid.

(177.) And whereas the said A. B. made default in payment of the sum of £—, on &c., and the same sum and interest, with costs, still remain due and unpaid; and judgment hath accordingly been entered up against him by the said C. D. and E. F. as of — term last.

Default in payment of debt, and that judgment was accordingly entered up e cognovit.

COMPENSATION.

(178.) And whereas the messuages, lands, and premises comprised in the said hereinbefore in part recited indenture of lease, of the &c., form part of the estate and hereditaments so contracted to be sold to the said A. B. as aforesaid, which were considered to be of freehold tenure in fee-simple, and the amount of the consideration money to be paid by the said A. B., for the said purchase, having been calculated upon the supposition that the whole of the said estate and hereditaments were to be conveyed to him in fee-simple, it hath been agreed be-

Agreement to allow compensation on account of difference between freehold and leasehold tenure.

tween the said parties hereto, that the said A. B. shall be entitled to retain, by way of compensation, out of the said purchase-money, the sum of £—, as the difference in value, in respect of the said premises comprised in the said recited lease, between the leasehold tenure, by which the same are held, and the fee-simple thereof. (a)

Amount of compensation.

(179.) And whereas the compensation in and by the said agreement directed to be made, hath been fixed at the sum of £—.

COMPOSITION.

Agreement to accept a composition for debts.

(180.) Whereas the said A. B. is justly and truly indebted to the said several persons parties hereto of the second part, in the several sums of money set opposite to their respective names in the schedule hereunder written or hereunto annexed; and the said A. B. having become embarrassed in his circumstances, and being unable to discharge the debts which are due from him as

(a) As to the doctrine of compensation, see Sugd. V. & P., ch. vi. s. 1.

foresaid, hath proposed to his said several creditors, that they should accept the composition of — shillings in the pound, on the amount of the debts now due and owing to them as aforesaid; and the said several creditors, having duly considered the said proposition, have agreed to accept the same composition accordingly.

(181.) And whereas in pursuance of the said proposal and agreement, the amount of the same composition of — shillings in the pound on the said several debts or sums of money, hath been paid to the said several persons, parties hereto of the first part, immediately before the execution of these presents, as they do hereby respectively acknowledge: And whereas the said several persons parties hereto of the first part have agreed to execute and give the release hereinafter contained.

(182.) And whereas the said A. B. and C. D. are justly and truly indebted on their partnership account unto the several persons parties to these presents of the third part, in several sums of money; and the said A. B. and C. D. are also severally indebted on their own private and separate

Payment of
composition,
and agree-
ment to exe-
cute release
of all claims.

Agreement
by co-part-
ners to con-
vey their co-
partnership
and private
property to
trustees, for
the benefit of
creditors.

accounts unto some of the persons who are, or are intended to be, parties to these presents of the third part, in several sums of money; and the said A. B. and C. D. being unable at present to pay and discharge the full amount of the debts owing by them as aforesaid, it was lately proposed and agreed by and between all the said parties to these presents, that the said A. B. and C. D. should convey and assign all the estate and effects belonging to them on account of their said partnership; and also that each of them should convey and assign all the estate and effects belonging to him on his own private account and as his separate property, unto the said E. F. and G. H., their heirs, executors, administrators, and assigns, upon the trusts hereinafter mentioned.

Agreement
between
debtor and
creditors, for
gradual li-
quidation of
debts.

(183.) And whereas the said A. B. is indebted to the said several persons parties hereto of the second part, in the several sums of money set opposite to their respective names hereunto subscribed, and being unable, at present, to discharge the same debts, hath proposed to his said creditors an arrangement for the gradual liquidation

thereof, by the immediate payment to each of the said creditors of one equal fourth part of the amount of their respective debts, and by payment of the residue of such debts by instalments, without interest, at the respective times and in manner hereinafter expressed; and the said parties hereto of the second part have acceded to the said arrangement, and have agreed to enter into the covenant and agreements on their respective parts hereinafter contained.

CONSIDERATION. *See Apportionment, Payment.*

CONTRACT FOR PURCHASE.

(184.) And whereas (b) the said A. B. (c) Contract for purchase of fee and of right of way. hath contracted and agreed with the said

(b) Generally speaking, the contract for purchase ought not to be *formally* recited. If, however, there is any subsequent variation in the terms of it, or if it contains any special provisions which are to be regarded in framing the conveyance, or if either or both of the parties died before the completion of the contract, then it should be fully and formally recited.

(c) If purchased in pursuance of trusts, add “in pursuance of the trusts reposed in him, by the said

C. D. for the absolute purchase of the messuages, lands, and other hereditaments hereinafter described, and intended to be hereby granted and released, [*or, if copyhold*, covenanted to be surrendered,] with their appurtenances, and the fee-simple and inheritance thereof in possession, free from all incumbrances (c), [and also for such right of way as hereinafter is granted, or intended so to be,] at or for the price or sum of £—.

Contract for
sale of fee, in
considera-
tion of rent-
charge.

(185.) And whereas the said A. B. hath contracted and agreed with the said C. D. for the absolute sale to him the said C. D. of the messuage, &c., hereinafter described and intended to be hereby released, with the appurtenances, and the fee-simple and inheritance thereof in possession, free from all incumbrances, in consideration of the an-

hereinbefore in part recited, &c.” If, at the request of *cestuis que trust*, “at the instance and request of the said A. A. and B. B. hath &c.” If purchased in pursuance of an Act of Parliament, add, “in pursuance and in exercise of the powers for that purpose given by the said hereinbefore in part recited Act of Parliament, hath, &c.”

(c) If the estate be subject to any incumbrances: *e. g.* annuities, mortgages, quit-rents, which are intended to be excepted, they should be referred to in this place.

thereof, by the immediate payment to each of the said creditors of one equal fourth part of the amount of their respective debts, and by payment of the residue of such debts by instalments, without interest, at the respective times and in manner hereinafter expressed; and the said parties hereto of the second part have acceded to the said arrangement, and have agreed to enter into the covenant and agreements on their respective parts hereinafter contained.

CONSIDERATION. *See Apportionment, Payment.*

CONTRACT FOR PURCHASE.

(184.) And whereas (b) the said A. B. (c) Contract for purchase of fee and of right of way.
hath contracted and agreed with the said

(b) Generally speaking, the contract for purchase ought not to be *formally* recited. If, however, there is any subsequent variation in the terms of it, or if it contains any special provisions which are to be regarded in framing the conveyance, or if either or both of the parties died before the completion of the contract, then it should be fully and formally recited.

(c) If purchased in pursuance of trusts, add “in pursuance of the trusts reposed in him, by the said

lease of the said B. B. of and in the messuages, &c. hereinafter described, free from all incumbrances, at or for the price or sum of £—.

(190.) And whereas the said A. B. hath contracted and agreed with the said C. D. for the absolute purchase of the messuages, lands, and other hereditaments, comprised in the said hereinbefore in part recited indentures, [or, if by endorsement, in the within written indenture,] and intended to be hereby granted and released, with the appurtenances, and the fee-simple and inheritance thereof in possession, free from all incumbrances, and discharged from all equity of redemption, in consideration as well of the said sum of £—, so due and owing as aforesaid, as of the sum of £—, making together the aggregate sum of £—.

(191.) And whereas the said A. B. hath contracted and agreed with the said C. D. for the absolute sale to him, the said C. D., of the said advowson, tithes, and other hereditaments hereinafter particularly described, and intended to be hereby granted and released, with the appurtenances, and the fee-simple and inheritance thereof in pos-

hold messuages, &c., hereinafter described, and intended to be hereby released and covenanted to be surrendered, with their appurtenances, and the fee-simple and inheritance thereof in possession, free from all incumbrances ; and all the timber and other trees growing thereon, of the value of — shillings and upwards, at or for the price or sum of £—, and such sum and sums of money for the said timber as the same should be valued at by two indifferent persons. [See tit. “*Valuation.*”]

Contract by
tenant for
purchase of
fee, and of all
arrears of
rent.

(188.) And whereas the said A. B. hath contracted and agreed with the said C. D. for the absolute sale to him of the said messuage or tenement and hereditaments hereinafter described, with the appurtenances, and the fee-simple and inheritance thereof in possession, free from all incumbrances ; and also of all rent and arrears of rent now due and owing or payable for or in respect of the same premises, at or for the price or sum of £—.

Contract for
purchase of
reversion in
fee.

(189.) And whereas the said A. B. hath contracted and agreed with the said C. D., for the absolute purchase of the remainder or reversion in fee-simple, expectant on the

decease of the said B. B. of and in the messuages, &c. hereinafter described, free from all incumbrances, at or for the price or sum of £—.

(190.) And whereas the said A. B. hath contracted and agreed with the said C. D. for the absolute purchase of the messuages, lands, and other hereditaments, comprised in the said hereinbefore in part recited indentures, [or, if by endorsement, in the within written indenture,] and intended to be hereby granted and released, with the appurtenances, and the fee-simple and inheritance thereof in possession, free from all incumbrances, and discharged from all equity of redemption, in consideration as well of the said sum of £—, so due and owing as aforesaid, as of the sum of £—, making together the aggregate sum of £—.

(191.) And whereas the said A. B. hath contracted and agreed with the said C. D. for the absolute sale to him, the said C. D., of the said advowson, tithes, and other hereditaments hereinafter particularly described, and intended to be hereby granted and released, with the appurtenances, and the fee-simple and inheritance thereof in pos-

Contract for purchase of equity of re-demption.

Contract for sale of advowson and tithes.

grantor and
grantee
equally

of one annuity or yearly sum of £—, to be paid to the said C. D., his executors, administrators, and assigns, for the term of — years if the said C. D. shall so long live to be secured in manner hereinafter mentioned: And upon the treaty for the purchase of the said annuity, it was agreed that the costs and charges of preparing the securities for the same, and of enrolling a memorial thereof, should be paid and borne by the said A. B. and C. D. in equal shares and proportions.

Contract for
purchase of
goods and
chattels.

(201.) And whereas the said A. B. hath contracted and agreed with the said C. D. for the absolute purchase of the several goods, chattels, furniture, and effects mentioned in the inventory or schedule hereunder written, at or for the price or sum of £—

Contract for
purchase of
copyright.

(202.) Whereas the above bounden A. B. hath agreed to purchase of and from the above named C. D. a certain manuscript work written by him the said C. D., entitled &c., together with the copyright and all other the right, title, and interest whatsoever in him the said C. D. therein, at or for the price or sum of £— sterling; and it hath been agreed that the said sum of £—, shall be

(194.) And whereas the said A. B. hath contracted and agreed with the said C. D. for the absolute sale to him, the said C. D., of the messuages, lands, and hereditaments comprised in and demised by the said herebefore in part recited indenture of lease, with the appurtenances, for all the residue now to come and unexpired, of the said term of — years, wanting — days, free from all encumbrances, at or for the price or sum of £—; and upon the treaty for the said sale, it was agreed that the said C. D. should be entitled to the rents of the said messuages, lands, and hereditaments, as and from the, &c.

Contract for
sale of under-
lease, and of
rent from a
certain day.

(195.) And whereas the said A. B. hath contracted and agreed with the said C. D. for the purchase of the said premises, for all the residue of the said term therein now to come and unexpired, at or for the price or sum of £—, and in consideration of a release to be given by the said A. B. to the said C. D. for all the breaches of covenant contained in the said [or, the within written] indenture of lease.

Contract for
purchase of
leaseholds,
in consider-
ation of a
certain sum
and of a re-
lease of all
breaches of
covenant.

(196.) And whereas the said A. B. hath contracted and agreed with the said C. D. for the absolute sale to him of the said ship

Contract for
sale of ship,
or shares of
ship.

or vessel, called the —, with the tackle, apparel, and furniture thereof, [or, of — sixty-four parts or shares of and in the said ship or vessel, called the —, and of and in the tackle, apparel, and furniture thereof,] at or for the price or sum of £—.

Contract for
sale of seams
of coal, con-
sideration to
be paid by
installments.

(197.) And whereas the said A. B. hath contracted and agreed with the said C. D., for the absolute sale to him, the said C. D., of the seam and seams of coal, and other minerals and rights hereinafter particularly mentioned, and intended to be hereby granted and conveyed, with the appurtenances, free from all incumbrances, at or for the price or sum of £—, to be paid in manner hereinafter mentioned: that is to say, the sum of £— on the, &c., next ensuing the date of these presents, and the sum of £—, residue of the said purchase-money, on the &c.)

Contract for
sale of mort-
gage debt.

(198.) And whereas the said A. B. hath contracted and agreed with the said C. D. to assign and convey to him the said C. D. the said principal sum of £—, so due and owing, as aforesaid, upon the said hereinbefore in part recited security, together with all interest due, or to become due, for the same, and all his estate, right, and power in,

ever, and upon the manor or lordship of D., and other the hereditaments comprised in the said indenture of mortgage, at or for the price or sum of £—.

(199.) And whereas the said A. B. hath contracted and agreed with the said C. D. for the sale to him of an annuity of £—, for the term of — years, at or for the price or sum of £—, to be secured not only upon all and singular the premises charged therewith by the indenture hereinafter mentioned, but also by the warrant of attorney of the said A. B., and a judgment to be entered up in pursuance thereof, in His Majesty's Court of —, at Westminster, as of — term last, — term next, or in some subsequent term, in an action against him the said A. B., at the suit of the said C. D., for the sum of £—, money borrowed, besides costs of suit: and upon the treaty for the purchase of the said annuity, it was agreed that the expenses of preparing and perfecting the securities for the same, and of enrolling a memorial thereof should be borne by the said A. B.

(200.) And whereas the said A. B. hath contracted and agreed with the said C. D., for the absolute sale to him, the said C. D.,

Contract for sale of annuity to be charged on land, and collaterally secured by warrant of attorney and judgment: expence of securities to be borne by grantor.

Contract for sale of annuity: costs of securities to be borne by

grantor and
grantee
equally of one annuity or yearly sum of £—, to be paid to the said C. D., his executors, administrators, and assigns, for the term of — years if the said C. D. shall so long live, to be secured in manner hereinafter mentioned: And upon the treaty for the purchase of the said annuity, it was agreed that the costs and charges of preparing the securities for the same, and of enrolling a memorial thereof, should be paid and borne by the said A. B. and C. D. in equal shares and proportions.

Contract for
purchase of
goods and
chattels.

(201.) And whereas the said A. B. hath contracted and agreed with the said C. D. for the absolute purchase of the several goods, chattels, furniture, and effects mentioned in the inventory or schedule hereunder written, at or for the price or sum of £—.

Contract for
purchase of
copyright.

(202.) Whereas the above bounden A. B., hath agreed to purchase of and from the above named C. D. a certain manuscript or work written by him the said C. D., entitled, &c., together with the copyright and all other the right, title, and interest whatsoever of him the said C. D. therein, at or for the price or sum of £— sterling; and it hath been agreed that the said sum of £—, shall be

paid at the times and in manner hereinafter mentioned.

(203.) Whereas the said A. B. hath written and composed a certain work, entitled—, and the same is now ready for the press; and the said C. D. hath contracted with the said A. B. for the purchase of the copyright of the said work, at or for the price or sum of £—, to be paid in the manner hereinafter mentioned.

(204.) And whereas the said A. B. hath contracted and agreed with the said C. D. for the sale to him, of the, &c., at or for the price or sum of £—, to be paid, or secured to be paid, by three several bills of exchange to be drawn by the said A. B. on, and accepted by, the said C. D., and to be payable at the times hereinafter mentioned, (that is to say) each of the said bills of exchange to be dated the, &c., and one of the said bills of exchange to be for the sum of £—, and to be payable at — months after date; another of the said bills of exchange to be for the sum of £—, and to be payable at — months after date; and the other of the said bills of exchange to be for the sum of £ —, and to be payable at — months after date.

Contract for
sale on be-
half of the
King.

(205.) And whereas the said A. B. and C. D. have contracted and agreed with the said E. F. and G. H., for and on the behalf of His Majesty, (by and with the consent and approbation of three of the Lord Commissioners of His Majesty's Treasury, testified by a warrant under their hands as authorized and required by the said recited act) for the absolute sale of, &c., &c.

Contract for
purchase by
copartners.

(206.) And whereas the said A. B. and C. D. are co-partners, and have contracted and agreed with the said E. F. for the absolute purchase of, &c., free from all incumbrances, at or for the price or sum of £—, to be paid out of their co-partnership effects.

Contract for
purchase of
estate, sub-
ject to cer-
tain incum-
brances; part
of considera-
tion to be sa-
tisfied by a
conveyance
of heredita-
ments which
purchaser
had contract-
ed for; and
payment of
residue to be
secured by
a mortgage.

(207.) And whereas the said A. B. and C. D. lately contracted and agreed with the said E. F. for the absolute purchase of, &c., free from all incumbrances, except the said mortgage debt of £—, and on the treaty for the said purchase, it was agreed that the sum of £—, part of the said sum of £—, should be satisfied by a conveyance to be made to the said E. F., or as he should direct of certain messuages, &c., situate, &c., which the said A. B. and C. D., had then agreed to

purchase from B. B., of, &c., at or for the price or sum of £—, and that the payment of the sum of £—, the residue of the said purchase money of £—, with interest for the same in the mean time, should be secured to the said E. F., his executors, administrators, and assigns, in manner hereinafter mentioned.

(208.) And whereas the said A. B. hath contracted and agreed with the said C. D., for the absolute purchase of, &c., at or for the price or sum of £—, free from all incumbrances, save and except and subject to a yearly rent charge, called a money-rent or salt-rent of £—, and another yearly rent of £—, payable to A. A. of &c., and now charged as well on the other lands of the said C. D. situate, &c., as on the messuages, &c. hereinafter described, and intended to be hereby granted and released: and it was by the contract for such purchase as aforesaid agreed that the hereditaments hereinafter mentioned, and intended to be hereby granted and released, should for ever continue and remain charged solely with the payment of the entirety of the said two several yearly rents

Contract for purchase of estate, subject to certain rents chargeable also on other property, and agreement that purchased property should henceforth be solely chargeable.

and payments to the said A. A., and that the said C. D., his heirs, executors, and administrators, and all and singular his and their real and personal estate, should be for ever acquitted and discharged, saved harmless and indemnified, by the said A. B., his heirs, executors, administrators, and assigns, of and from the payment of the said two yearly rents or payments, and every part thereof, and of and from all costs, damages, and expenses whatsoever, for or by reason or means of the non-payment thereof, or of any part thereof, by the said A. B., his heirs, executors, administrators, or assigns.

Contract for
sale subject
to incum-
brances and
a right of re-
purchase.

(209.) And whereas the said A. B. hath contracted and agreed with the said C. D. for the absolute purchase of &c., &c., at or for the price or sum of £—, subject nevertheless to the said hereinbefore in part recited incumbrances, and subject also to a right in the said C. D., or his heirs, to repurchase the said messuages, &c., at any time within one year from the day of the date of these presents, upon the terms hereinafter mentioned.

Contract for
sale of lands,
but no con-
veyance
made.

(210.) And whereas the said A. B. some time since contracted and agreed with the

said D. F. for the absolute sale to him of the said hereditaments and premises so devised to the said A. B., by the said will of the said C. B., as aforesaid, at or for the price or sum of £—, but no conveyance hath yet been executed thereof, in pursuance of such agreement.

(211.) And whereas the said A. B., hath ^{Sub-contract.} agreed with the said C. D. to give up to him the said C. D. the benefit of his said contract or bargain.

(212.) And whereas the said A. B. hath ^{Id. Another form.} consented and agreed that the said C. D. shall have the benefit of the said contract upon the terms of repaying the said sum of £— to the said A. B., and paying the sum of £— to the said C. D. and E. F.

CONVEYANCE. *See Appointment, Assignment, Bargain and Sale, &c. &c.*

(213.) And whereas the said A. B. hath consented and agreed to make a new conveyance of the said premises, and the said C. D., and E. F. have agreed to join therein for the purpose of confirming and giving effect to the same.

Agreement by persons interested in purchase-money to join in conveyance.

(214.) And whereas the said A. B., and C. his wife, and D. E. and F. his wife, being (together with the said E. G. and P. M. G. in their own respective rights and with the said E. G. and G. B., as the personal representatives of the said R. G. deceased,) interested in the said purchase money under the trusts of the said will, have respectively agreed to join in these presents in manner hereinafter mentioned. (a)

Agreement by heir to effectuate ancestor's contract by joining in conveyance.

(215.) And whereas the said A. B. hath agreed to carry into effect the said recited contract, and for that purpose to join in these presents in manner hereinafter mentioned. (b)

Agreement, on marriage, to convey copyholds and leaseholds, and to pay off mortgage out of wife's personality: husband to be entitled to residue.

(216.) And, whereas upon the treaty for the said intended marriage it was agreed, that the said copyhold and leasehold estates should be conveyed to the uses, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoies, agreements, and declarations hereinafter expressed, or declared of or concerning the same respectively, and that the said mortgage for £—, should be forthwith in

(a) *Ante*, p. 42.

(b) *Ante*, p. 157, n. (b)

the first place paid off and discharged, out of the personal property of the said A. B., and that the said C. D., should immediately upon or after the solemnization of the said intended marriage, be and become absolutely entitled, in his marital right, to the residue which should remain of the personal property after payment of the said mortgage money.

(217.) And whereas the said A. B. and C. D., at the request of the said E. F. and G. H., have agreed to convey all the mes-
suages, &c., comprised in and conveyed by the said hereinbefore in part recited inden-
tures of lease and release of the &c., to and in such manner that the same may become vested in the said B. B. and D. D., their heirs and assigns, and may be held by them in trust for the said E. F. and G. H., as part of their partnership stock in trade, and as or in the nature of personal estate.

Agreement
to re-convey
freeholds to
be held as
part of part-
nership .
stock, and
in the nature
of personal
estate.

(218.) And whereas the said A. B. and C. D. have agreed to join in the conveyance and release hereinafter contained, without prejudice to their shares and interests of and in the said sum of £—.

Agreement
to join with-
out preju-
dice to in-
terest in
money.

Agreement
to join in
conveyance
to remove
doubts.

(219.) And whereas doubts having been entertained whether the said hereinbefore in part recited indenture of assignment comprised the messuages, lands, and other hereditaments hereinafter described, the said A. B., in order to put an end to such doubts, hath agreed to join in the assignment hereinafter contained.

Agreement
to join in
order to
supply evi-
dence, and
to convey
legal estate,
if any.

(220.) And whereas the said A. B. and C. D. have agreed to join in the conveyance of the said messuage, &c., for the purpose of supplying evidence of a title under them without the production of the said indenture, bearing date, &c., and also for the purpose of conveying the legal estate (if any) which they still have in the premises.

Agreement
for mutual
conveyance.

(221.) And whereas the said A. B. some time since contracted and agreed with the said C. D., to convey and assign to him, the said C. D., or as he should appoint, such of the freehold premises comprised in the said hereinbefore in part recited indenture of release of, &c., as in the ground plan on the margin of these presents is delineated and coloured yellow, and also such part of the said piece or parcel of ground in the said

hereinbefore in part recited indenture of lease of, &c. contained, as in the said ground-plan is coloured blue, in consideration that the said C. D. should convey, or cause to be conveyed, to the said A. B. or as he should appoint, the freehold part of such of the premises as on the said ground-plan is also delineated, and thereon coloured green; and should assign, or cause to be assigned, to him the said A. B., or as he should appoint, such part of the piece or parcel of ground in the said hereinbefore in part recited indenture of lease of, &c. contained, as in the said ground plan is coloured red.

(222.) And whereas by indentures of lease and release, and assignment already prepared and engrossed, the lease bearing date the day next before the day of the date of the indenture of release and assignment, and the release and assignment bearing, or intended to bear, even date with these presents, and made or expressed to be made between &c., the said freehold hereditaments on the said ground-plan delineated and coloured yellow, and the said leasehold piece or parcel of ground on the said ground-plan also delineated and coloured blue, are ex-

That by in-
-dentures
already pre-
-pared free-
-holds and
leaseholds
are intended
to be con-
veyed.

pressed and intended to be thereby conveyed and assigned respectively, discharged of the said mortgage, unto and to the use of, or in trust for, the said A. B., his heirs, appointees, executors, administrators, and assigns, according to the nature and quality of the said estates respectively.

Agreement
(in considera-
tion of
indentures
already pre-
pared) to
convey and
assign free-
hold and
leasehold.

(223.) And whereas in consideration of the said indentures of lease and release and assignment, so prepared and intended to be executed as hereinbefore is mentioned, it hath been agreed by and between the said parties to these presents, that the freehold hereditaments and premises hereinafter particularly mentioned and described, and the said leasehold piece or parcel of ground and other leasehold premises hereinbefore particularly mentioned and described, should be respectively conveyed and assigned in manner hereinafter mentioned.

Desire that
heredita-
ments should
be conveyed
to uses af-
terwards de-
clared.

(224.) And whereas the said A. B. is desirous that the said messuages, lands, and other hereditaments should be conveyed and limited to the uses hereinafter expressed or declared of or concerning the same.

That infants
are made
parties in
contempla-
tion.

(225.) And whereas in contemplation of the said A. B., and C. D. becoming, by the

custom of gavelkind, respectively competent to convey by feoffment, on their severally attaining the age of 15 years, (c) it hath been agreed that they should be made parties to these presents.

tion of their being able to convey by custom of gavelkind, at 15.

(226.) And whereas the said A. B. did not within — months after the decease of the said C. D. make the conveyance, surrender, and payments, by the said hereinbefore in part recited will of the said C. D., deceased, directed to be made.

That conveyance, surrender, and payments were not made within the time directed by will.

(227.) And whereas the said A. B. sometime since contracted and agreed with the said C. D. for the absolute sale to him, the said C. D., of the said hereditaments and premises, so devised to the said A. B. by the will of the said B. B. as hereinbefore is mentioned, at or for the price or sum of £—, but no conveyance hath ever yet been executed thereof in pursuance of such agreement.

That no conveyance hath been made in pursuance of recited contract.

(228.) And whereas since the execution of the lastly hereinbefore in part recited indenture, the said A. B. hath sold and conveyed part of the said closes, pieces, or parcels of ground, and other hereditaments, unto C. D., of &c.

Sale and conveyance of part of estate.

(c) Co. Litt. 171, b, n. 5; Bac. Abr. tit. Gavelkind, (A.) I 5

Id. Another form. (229) And whereas the said A. B. lately sold to C. D. of &c., a messuage or tenement or dwelling-house with the appurtenances, situate, &c., (being parcel of the hereditaments comprised in the aforesaid devise of the residue of the said testator's estate,) at or for the price or sum of £—, which sum hath been paid by the said C. D. to the said A. B., and, in consideration thereof, the said purchased premises have been conveyed by or by the direction of the said A. B., unto, or in trust for, the said C. D., his heirs, appointees, and assigns.

COVENANT.

Covenant to stand seised. (230.) And whereas by indenture bearing date on or about, &c., and made or expressed to be made between A. B. of the one part, and C. B. of the other part, in consideration of the natural love and affection which the said A. B. hath for the said C. B., he the said A. B. did thereby covenant with the said C. B., and his assigns, that he the said A. B. would thenceforth during the joint lives of himself and the said C. B. stand and be seised of all, &c. with the appurtenances, to the use of the said C. B. during

the joint lives of the said A. B. and C. D., at or under the yearly rent of, &c.

(231.) And whereas by an indenture, bearing date on or about, &c., and made or expressed to be made between, &c., in consideration of the said sum of £— into the Bank of England, to the credit of the said cause, paid by the said A. B., certain copyhold messuages, tenements, and other hereditaments, in the said indenture now in recital more particularly described, were, in obedience to the said decrees and decretal orders, covenanted to be surrendered unto and to the use of the said A. B., his heirs and assigns for ever, to be held according to the custom of the manor of D., by the rents and services anciently due, and of right accustomed.

Covenant to surrender copyholds in consideration of money paid into the bank, in obedience to decree.

(232.) And whereas the said A. B. and C. D. have agreed to enter into a covenant with the said E. F., that the said G. H., when and as soon as he shall attain his age of 21 years, or when and as soon as an order from the High Court of Chancery shall be obtained for that purpose, shall join in the conveyance and release hereinafter contained; and that in case the said G. H. should depart this life before he shall have executed

Agreement to covenant that infant mortgagee shall execute when of age, or when ordered by the Court of Chancery.

these presents, then the heir for the time being of the said G. H., shall execute another conveyance of the lands, &c. hereby released, &c., to such uses, and for such ends, intents, and purposes, as are hereinafter limited, expressed, and declared of and concerning the same, or as are near thereto as the change of interests, the deaths of parties, or other intervening circumstances will admit.

CURTESY.

Title by the
courtesy.

(233.) And whereas the said A. B. departed this life on or about, &c., leaving the said B. B., her eldest son and heir at law; and on her death the said B. B., the father, as the surviving husband of the said A. B., became tenant for his life by the courtesy of England, of the said messuage, lands, and other hereditaments hereinafter particularly described, and intended to be hereby granted and releascd, with the appurtenances.

DEATHS.

Death, un-
married.

(234.) And whereas the said A. B. departed this life on or about the — day of —,

[*or*, sometime in the month of —,] in the year of our Lord —, without having ever been married. (a)

(235.) And whereas the said A. B., one of the persons on whose lives the said hereinbefore in part recited lease was granted, departed this life on or about the &c.

(236.) And whereas the said A. B. departed this life on or about the &c., without leaving issue.

(237.) And whereas the said A. B. departed this life on or about the &c., intestate, leaving the said B. B. and B. D., his coheiresses at law, him surviving.

(238.) And whereas the said A. B. departed this life on or about the &c., without having altered or revoked his said will, and the same was, on or about the &c., duly proved by the said C. D. and E. F., [*or*, by the said executors] in the Court of — [*or*, in the proper Ecclesiastical Court.]

(239.) And whereas the said A. B. departed this life on about the &c., intestate,

(a) Some consider it advisable to state not only the time of death, but the time and place of burial. This plan, however, is not generally pursued.

so far as relates to the legal estate of and in the said messuages, lands, and other hereditaments comprised in the said hereinbefore in part recited mortgage, leaving the said C. B., his eldest son and heir at law, him surviving.

Death of
trustee,
leaving his
co-trustee
surviving.

(240.) And whereas the said A. B. departed this life on or about the &c., leaving the said C. D., his co-trustee, him surviving.

Death of
surviving
trustee in-
testate as to
trust estates.

(241.) And whereas the said B. B. survived his co-trustees, the said A. D. and E. F., and afterwards departed this life without having made any conveyance or disposition, by will or otherwise, of the said trust estate, or any appointment of a new trustee or trustees thereof, leaving C. B., his eldest son and heir at law, him surviving.

Death by
shipwreck.

(242.) And whereas shortly after the date of the said will, the said A. B., C. D., and E. F. were all drowned at sea in their passage from &c., to &c., the vessel in which they sailed having been cast away on her voyage, and every person on board the said vessel, (so far as the same can be ascertained,) having perished in consequence thereof.

DEBENTURE.

(243.) And whereas by two several certificates or debentures, numbered —, under the hands of the said trustees of the said tontine, bearing date, &c., they the said trustees did certify and declare that the said A. B. had subscribed two shares in the first class of the said tontine, and had named C. B. and D. B. his nominees; and the said trustees did by the said debentures further certify that the said A. B., his executors, administrators, and assigns, should receive two annuities of £—, by equal half-yearly payments, with such additional interest as from time to time should accrue by survivorship in the first class of nominees of the said tontine, one of the said annuities to be payable during the life of the said A. B., and the other for the life of the said C. D.

Debentures certifying subscription and title to tontines.

DEBT. *See Composition.*

(244.) Whereas A. B., of, &c., is indebted unto the said C. D. in the sum of £—, for goods sold and delivered.

Debt for goods sold and delivered.

Agreement
to assign
debt.

(245.) And whereas the said C. D. hath agreed with the said E. F. to assign to him the said debt, in consideration of the sum of £—.

Debts
scheduled.

(246.) And whereas the said A. B. is indebted unto the several persons, parties hereto, of the — part, in the several sums of money set opposite to their respective names in the schedule hereunder written, or hereunto annexed.

Agreement
to assign
leaseholds
to trustees
to pay debts.

(247.) And whereas the said A. B., being unable to pay the whole amount of his said several debts, hath agreed to assign the said leasehold, messuage, or tenements and premises, subject to the existing incumbrances thereon, unto the said A. B., upon trust, to sell the same, and to apply the money to arise by such sale in the manner hereinafter mentioned.

DECREE.' *See Suit.*

DEED. *See Bargain and Sale, Feoffment, &c.*

Deed-poll.

(248.) Whereas by a deed-poll, or instrument in writing, under the hands and seals of the said A. B. and C. D., endorsed

on the said last mentioned indenture, and bearing even date therewith, &c., in consideration of &c., the said A. B. and C. D. did &c.

(249.) Whereas by an indenture, bearing Indenture
inter partes. date on or about &c., and made or expressed to be made, between A. B. of the one part, and the said C. D. of the other part, in consideration of &c., he, the said A. B., did &c.

(250.) And whereas the several deeds, evidences, and writings, specified in the schedule hereunder written, or hereunto annexed, relate as well to the hereditaments comprised in the said recited indenture of &c., as to other property of greater value belonging to the said A. B.: And upon the treaty for the said purchase, it was agreed that the said deeds, evidences, and writings, should remain in the custody and possession of the said A. B., his heirs, and assigns, upon his entering into the covenant hereinafter contained. (b)

(b) The usual evidences of title are the original deeds; but if these cannot be delivered, a purchaser, in the absence of any express stipulation to the contrary, is entitled to attested copies, at the expense of the

Agreement
that title-
deeds shall
remain in
the hands of
a particular
person, on
his entering
into a cove-
nant for
production.

(251.) And whereas it hath been agreed that the deeds and evidences of title relating to the hereditaments and premises hereby granted and released shall remain in the possession of the said A. B., upon his entering into such covenant for the production and delivering copies thereof, as hereinafter is contained.

Agreement
that leases
shall remain
in the hands
of a particu-
lar person,
on his en-
tering into a
covenant for
production.

(252.) And whereas it hath been agreed that the several leases under which the mes- suages or tenements and premises herein-before described are holden, shall remain in the possession of the said A. B., upon his entering into such covenant for the production and delivering copies thereof, as herein-after is contained.

vendor, and to a covenant for production of the originals. See *Dare v. Tucker*, 6 Ves. 460; *Boughton v. Jewell*, 15 Ves. 176; *Berry v. Young*, 2 Esp. Ca. 640, n; *Barclay v. Raine*, 1 Sim. & Stu. 449. In the case first referred to, *Lord Eldon* observed, that purchasers have set a value upon attested copies which does not belong to them: they are waste paper upon an ejectment, except between the parties themselves; and the Lord Chancellor suggested, that an act of parliament should be passed, declaring that a copy certified by the Master to be a true copy should be evidence. See the Propositions of the Real Prop. Com. Third Rep. pp. 72, 73.

(253.) And whereas the title-deeds and writings enumerated in the schedule thereof hereunder written, or hereunto annexed, concern the said messuages, lands, and hereditaments hereby charged, or made chargeable, with the payment of the said annuity, or yearly sum of £—, and are now in the custody or power of the said A. B., and upon the treaty for the purchase of the said annuity, it was agreed that the said A. B. should enter into a covenant with the said C. D. for the production of the same deeds and writings in manner hereinafter mentioned.

(254.) And whereas the said A. B. is about to go into parts beyond the seas, and as the purchase made by the said C. D., as aforesaid, cannot be carried into immediate execution, it is deemed advisable that the said A. B. should, previously to his departure from England, execute a conveyance of all the said hereditaments, to or in favour of the said C. D., to be deposited with the said E. F., and delivered to the said C. D., on the completion of the said purchase.

Agreement
on purchase
of annuity
to enter into
covenant for
production
of the title-
deeds of the
land charged
therewith.

Delivery of
deed as an
escrow.

DESCENT. *See Heirship.*

DEVISE. *See Will.*

DISCLAIMER.

*Desire of
one who has
never acted
in trusts to
disclaim.*

(255.) And whereas the said A. B. hath never acted in the trusts of the said hereinbefore in part recited will, [or settlement,] but hath refused to perform the same, and is desirous of disclaiming the said trusts in manner hereinafter mentioned. (d)

(d) In framing a deed of disclaimer it is usual to premise a recital to this effect. It has been made a question whether a *parol* disclaimer be sufficient. In *Townson v. Tickell*, 3 B. & A. 31, *Mr. Justice Holroyd* intimated that it would; and the author of the *Touchstone* inclined to a similar opinion; for, in p. 452, he says, "it seems a verbal waver is sufficient." In a recent case, *Sir John Leach*, M. R. held, that though a trustee had never executed a deed disclaiming the trust, yet his *conduct* might amount to a disclaimer. "It is most prudent," he observed, "that a deed of disclaimer should be executed by a person named trustee, who refuses to accept the trust, because such deed is clear evidence of the disclaimer, and admits of no ambiguity; but there may be conduct which amounts to a clear disclaimer." *Stacey v. Elph*, 1 Mylne & Keen, 199. The leading cases on the subject of disclaimer are *Adams v. Taunton*, 5 Madd. 435; *Crewe v. Dicken*, 4 Ves. 97; *Nicolson v. Wordsworth*, 2 Sw. 365; *Townson v. Tickell*, *ut sup.*; *Doe d. Smyth v. Smyth*, 6 B. & C. 112; S. C. 9 D. & R. 136; and see the cases referred to in 2 Sw. 372, note.

(256.) Whereas by a deed-poll or instrument in writing, under the hand and seal of the said A. B., bearing date the &c., he, the said A. B., did refuse to act under or by virtue of the said hereinbefore in part recited will, [or, settlement,] or to perform all or any of the trusts, powers, or directions therein contained, [or, to accept any of the estates or monies thereby given and bequeathed to him,] and did disclaim, release, and relinquish unto the said C. D., his heirs, executors, administrators, and assigns, all that messuage, &c., and the said sum of £—, and all and every other the messuages, lands, and hereditaments, sums of money, estate, and effects of, what nature or kind soever, which were or might have been vested in him the said A. B. by the said will [or settlement.]

DOWER.

(257.) And whereas the said A. B. departed this life on or about the, &c., intestate, leaving the said B. B., his eldest son and heir at law, and the said C. B., his widow;

Title to
dower under
8 & 4 W. IV.
c. 155.

whereupon the said C. B. became and still is entitled to dower, out of, or in the said premises, lands, and hereditaments, herein-after particularly mentioned and described, and intended to be hereby granted and released, with the appurtenances. (e)

Title to
dower un-
der the old
law.

(258.) And whereas the said A. B. was the wife of the said C. B. at the time when he was seized of the freehold and inheritance of the said messuages, lands, and hereditaments; and the said C. B. having departed this life, she, the said A. B., became, and still is, entitled to dower out of, or in the same messuages, lands, and hereditaments. (f)

(e) See Dower Act, 3 & 4 W. IV. c. 105, s. 4, which enacts, that no widow shall be entitled to dower out of any land which shall have been absolutely disposed of by her husband in his lifetime, or by his will.

(f) An actual seisin by the husband is rendered unnecessary by the 3 & 4 W. IV. c. 105, s. 3, which enacts, "that when a husband shall have been entitled to a right of entry or action in any land, and his widow would be entitled to dower out of the same if he had recovered possession thereof, she shall be entitled to dower out of the same, although her husband shall not have recovered possession thereof; provided that such dower be sued for or obtained within the period during which such right of entry or action might be enforced."

(259.) And whereas A. B., the wife of the said C. B., will, if she survive the said C. B. become entitled to dower out of or in the said hereinbefore mentioned piece or parcel of land.

(260.) And whereas the said A. B. hath requested the said C. D. to assign to her one third part of the said lands and hereditaments, as and for her dower, which he hath agreed to do.

(261.) And whereas the said A. B. hath contracted and agreed with the said C. D. and E. his wife, for the purchase of the dower and right and title to dower of the said E. D. of or in the said messuages, &c., at or for the price or sum of £—.

(262.) And whereas the said A. B. hath consented and agreed to exonerate and discharge the said lands and hereditaments of and from all her right and title to dower therein; and for that purpose to join in these presents in manner hereinafter mentioned.

(263.) And whereas the said E. D. hath agreed to indemnify the said A. B. against such dower of the said C. D., in manner hereinafter mentioned.

Inchoate ti-
tle to dower
under the old
law

Request and
agreement to
assign dower

Contract for
purchase of
dower of
lands belong-
ing to former
husband.

Agreement
to exonerate
lands from
dower.

Agreement
to indemnify
purchaser
against
dower.

Agreement
to accept an
annuity from
heir at law,
in lieu of
dower.

(264.) And whereas the said A. B. hath agreed to accept a clear annuity or yearly sum of £— for her life, in lieu of her dower, and in full satisfaction and discharge of all right and title to the same, and of all damages on account thereof.

Declaration
by deed to
prevent
dower.

(265.) And by the indenture now in recital, it was declared that no widow of him the said A. B. should be entitled to any dower or right of dower, out of, or in the messuages, lands, and hereditaments therinbefore granted and released, or any part thereof. (g)

Deed to pre-
vent dower.

(266.) And whereas by a deed-poll or instrument in writing, under the hand and seal of the said A. B., bearing date on or about,

(g) The 3 & 4 W. IV. c. 105, enacts, that a widow shall not be entitled to dower out of any land of her husband when in the deed by which such land was conveyed to him, or by any deed executed by him, it shall be declared that his widow shall not be entitled to dower out of such land, *sect. 6*; and that a widow shall not be entitled to dower out of any land of which her husband shall die wholly or partially intestate, when by the will of her husband, duly executed for the devise of freehold estates, he shall declare his intention that she shall not be entitled to dower out of such land, or out of any of his land; *sect. 7*.

., he the said A. B. did declare that no widow of him the said A. B. should be entitled to any dower, or right of dower, out of or in the messuages, &c. comprised in and conveyed by the said hereinbefore in part recited indentures of &c., or any part thereof.

(267.) And by the will now in recital, the said A. B. did declare his intention that no widow of him the said A. B. should be entitled to any dower, or right of dower, out of, or in, any manors, messuages, lands, or other hereditaments, of which the said A. B. should die wholly or partially intestate.

(268.) And whereas by a deed-poll, or instrument in writing, under the hand and seal of the said A. B., [and duly acknowledged by her as her act and deed,] bearing date on or about, &c., she the said A. B., [with the concurrence of the said C. B. her husband, testified by his being a party to, and sealing and delivering the deed now in recital,] (a) did, for the considerations therein mentioned,

Declaration
by will to
prevent
dower.

Release of
dower.

(a) See 3 & 4 W. IV, c. 74, s. 77. The doubt which has been entertained whether a woman, married on or before the first January, 1834, can release her dower by a deed acknowledged according to the act just referred to, is generally admitted to be a mere crotchet.

grant, remise, release, dispose of, and for ever quit-claim unto the said C. D., his heirs, and assigns, all the dower and thirds, and right and title of dower or thirds, at the common law, in equity, or otherwise, which the said A. B. had or could, or otherwise might have, claim, challenge, or demand, of, into, or out of all and singular the said messuages, lands, and hereditaments, so conveyed as aforesaid, and of, into, or out of the rights, members, and appurtenances thereto belonging, or any part thereof.

ENFRANCHISEMENT.

Contract
for enfran-
chisement of
copyholds.

(269.) And whereas the said A. B. hath contracted and agreed with the said C. D. for the enfranchisement of the said copyhold or customary messuages, lands, and other hereditaments, hereinafter described, at or for the price or sum of £—. (b)

(b) There are, at least, two modes by which copyholds may be enfranchised:—1. Where the lord being seised in fee simple, conveys his estate in the copyhold to the tenant:—2. Where he exercises a power of enfranchisement; and some writers have added a third

(270.) And whereas the said A. B. hath, ^{Id. Another} form.
in consideration of the sum of £—, con-

mode, viz., where the lord releases to the copyholder all seignioral rights. (But see 1 *Scriv.* *Copyh.* 653. 3rd. ed.) The conveyance should be made *directly* to the copyholder, otherwise, for some purposes, his copyhold interest will continue. (1 *Scriv.* 655.) The heir of a copyholder is capable, *before* admittance, of being enfranchised. (*Wilson v. Allen*, 1 *Jac. and W.* 611.) It is usual to state, by way of recital, the seisin of the lord, or his power of enfranchisement, and the fact of possession by the tenant. If it be intended that the enfranchised copyholder shall retain such right of common within the manor, as was annexed to his customary estate, it ought to be expressly granted. (1 *Scriv.* 659.) If, however, the commonage be *not* within the manor, a grant is unnecessary. The reason of this difference seems to be, that, in the one case, the commonage is appurtenant to the estate; in the other, appendant to the land. (*Crowther v. Oldfield*, *Salk.* 366; *Tyrringham's Case*, 4 *Rep.* 37; *Barwick v. Matthews*, 5 *Taunt.* 377.) If mines are intended to be reserved to the lord, they must be reserved in express terms. (2 *T. R.* 701; 1 *Scriv.* 25.) If the copyholder hold other lands than those enfranchised, a clause declaring that the enfranchisement shall not extend to any other of the copyholder's customary tenements, is commonly inserted. In addition to the usual covenants for title, the lord should enter into a covenant for the production of the title deeds to the manor. In consequence of the extinguishment of the copyhold tenure upon an enfranchisement, and the consequent acceleration of the right of enjoyment under the freehold tenure, with all its incumbrances, it is sometimes advisable to create a term

tracted and agreed with the said C. D. to enfranchise the said messuage, lands, and hereditaments, and to free and discharge the same of and from all fines, heriots, rents, suit, services, and customs whatsoever, so that the said messuage, lands, and hereditaments, shall henceforth be of freehold, and not of copyhold, tenure.

Deed of enfranchise-
ment, by
appointment
and release.

(271.) And whereas by an indenture of appointment and release bearing date the, &c., and made, or expressed to be made, between A. B. of &c., of the first part, C. D. of &c., of the second part, and the said

of years out of the copyhold estate, before the enfranchisement is effected, so that the possession, if necessary, may depend on the term. For this purpose, a license to demise for a long term, e. g. 1000 years, should be obtained from the lord. The copyholder ought then to demise to a trustee, declaring that he shall hold the term in trust for the copyholder, his heirs, and assigns, and to attend the reversion and inheritance of the copyholds, in the mean time and until the copyhold tenure shall be extinguished; and after the extinguishment, in trust for the freeholder, his heirs, and assigns, to the end that the reversion and inheritance of the copyhold tenement in the mean time, and until the copyhold tenure shall be extinguished, and afterwards to the intent that the freehold estate in the same hereditaments, shall, by means of the term, be protected from all incumbrances.

E. F. of the third part, it was witnessed that in consideration of the sum of £—, to the aid A. B. and C. D. paid by the said E. F., he said A. B. and C. D., in pursuance and exercise and execution of the power and powers, authority and authorities, to them or either of them belonging, or in them or either of them vested, or them or either of them enabling, did, by the deed or instrument in writing now in recital, sealed and delivered by them both, in the presence of, and attested by the two credible persons whose names are thereon endorsed as witnesses attesting the execution thereof, by the said A. B. and C. D., direct, limit, and appoint, that the copyhold hereditaments therein and hereinafter described, should from thenceforth go, remain, and be to the use of the said E. F., his heirs, and assigns for ever, severed from the said manor, and discharged from all yearly and other payments, rents, fines, hereditaments, fealties, suits of court, and other services; and it was further witnessed that, for the consideration aforesaid, the said A. B. and C. D. did grant, bargain, sell, release, enfranchise, and confirm unto the said E. F. (therein mentioned to be in

his actual possession by virtue of a bargain and sale for a year, made to him by the said A. B. and C. D. in consideration of five shillings by an indenture bearing date the day next before the day of the date thereof,) *All, &c.* with the appurtenances: To hold the same unto and to the use of the said E. F., his heirs, and assigns, for ever, discharged from all copyhold and customary services.

EXCHANGE.

Agreement
for an ex-
change.

(272.) And whereas the said A. B. and C. D. have mutually agreed to exchange their said several and respective lands and hereditaments for the lands and hereditaments of each other, [and to make such reciprocal conveyances thereof as are herein-after mentioned.] (c)

(c) In order to perfect an exchange operating at common law, an actual entry is necessary. Until executed by entry, the parties have no freehold, either in deed or law; and if one of them die before entry, the exchange will be void. *Co. Litt.* 50, b. It appears from *Madox's Form. Angl.* that in early times an exchange was a very frequent mode of conveyance, as, indeed, might be expected from the small quantity of money

(273.) And it hath been agreed by and ^{Agreement to pay sum of money for owesty.} between the said parties to these presents that the said A. B. shall pay to the said C. D. the sum of £—, for equality of exchange.

(274.) Whereas by an indenture, bearing ^{Exchange.} date on or about, &c., [or, by indenture of lease and release, bearing date respectively the, &c., the release being made, &c.,] and made or expressed to be made between A. B. of the one part, and the said C. D. of the other part, the messuage, lands, and other hereditaments hereinafter particularly mentioned and described, and intended to be hereby granted and released, with the appurtenances, were conveyed and limited unto and to the use of the said C. D., his heirs, and assigns, for ever, in exchange for

then in circulation. At the present day it is but seldom used; and when employed, the conveyance is made to operate under the Statute of Uses, in order to avoid the necessity of an actual entry. The expense and inconvenience resulting from the warranty incident to an exchange, combined with other obvious causes, have occasioned this disuse; and reciprocal conveyances,—the one in consideration of the other,—are now commonly substituted for an exchange.

certain lands and other hereditaments therein particularly mentioned or referred to.

Agreement
for mutual
release of
warranty in-
cident to ex-
change.

(275.) And whereas the said A. B. and C. D., being respectively satisfied with the title to the manors and other hereditaments exchanged by them as aforesaid, have agreed to execute such releases as are hereinafter contained of the right of re-entry; and the benefit of the warranty incident at law to the said exchange, and of the right of re-entry in case of eviction under the clauses for that purpose, contained in the said indenture as hereinbefore is recited. (d)

EXECUTORS. *See Probate, Will.*

EXTENT. *See Writ.*

FELO DE SE.

Inquisition
finding the
person of
felo de se.

(276) Whereas it hath been represented to us, by the Commissioners of our Treasury,

(d) See Touch. 290; *Bustard's Case*, 4 Rep. 121: Co. Litt. 73, b.

that by an inquisition taken at, &c., in our county of &c., before A. B., one of our coroners of our said county, it was found that C. D., of, &c., feloniously, wilfully, and of his malice aforethought, did kill and murder himself.

(277.) And whereas it hath been further represented to us by the said Commissioners of our Treasury, that by an inquisition taken by a writ *ad melius inquirendum* issued out of our Court of King's Bench at Westminster, taken at, &c., in our said county of &c., on the, &c., it was found that the said C. D. was, at the time of his death, possessed of, &c., and that the several persons following were, at the time of the death of the said C. D., indebted to him in the respective moneys hereinafter mentioned for rent then due and in arrear, from the said several persons respectively to the said C. D., (that is to say,) G. B. of, &c., in the sum of, &c.

Inquisition
finding the
lands of *felο
de se.*

(278.) And whereas it hath been further represented to us by the said Commissioners of our Treasury that the said B. B., &c., did, by their memorial, presented unto the said Commissioners of our Treasury, on

Memorial of
the legatees
of *felο de se.*

behalf of themselves, and the other legatees named in the will of the said C. D., state that the said C. D., by his last will and testament, bearing date, &c., gave and bequeathed, &c.; and the said B. B., &c., prayed such relief in the premises as to the said Commissioners of our Treasury should seem meet.

Recommen-
dation to the
crown to
grant the
forfeited
property of
felo de sc.

(279.) And whereas our said Commissioners have recommended unto us to grant the property so forfeited to us as aforesaid, in the manner hereinafter mentioned.

FEOFFMENT.

Feoffment
and livery
of seisin.

(280.) Whereas by indenture of feoffment, bearing date, &c., and made, &c., and by livery of seisin made according to the form and effect thereof, the messuages, lands, and other hereditaments hereinafter particularly mentioned and described, and intended to be hereby granted and released, with the appurtenances, were enfeoffed and conveyed unto and to the use of the said A. B., his heirs, and assigns for ever.

FIAT. *See Bankruptcy.*

—
FINE.

(281.) And, by the indenture now in re-
cital, the said A. B. did covenant that he and
C., his wife, would, in or as of — term then
next, [or, in or as of the then next General
Session of Assizes for the county palatine of
Lancaster *or* Chester,] levy unto the said
C. D. and his heirs, a fine *sur cognizance de*
droit come ceo, &c., of the said messuages,
lands, and other hereditaments; and the
said A. B., and C. his wife, did direct and
declare that the said fine should enure to the
use, &c.

Covenant to
levy fine and
declaration
of uses.

(282.) And whereas the said fine so cove-
nanted to be levied as aforesaid by the said
A. B., and C. his wife, was duly levied by
them unto the said C. D., in or as of —
term now last past, [or, in or as of the last
General Session of Assizes held for the
County Palatine of Lancaster, *or* Chester,]
pursuant to the said recited agreement or
covenant for that purpose.

That fine
was levied in
pursuance of
covenant.

(283.) And whereas in pursuance and part
performance of the said agreement on the

That fine has
been levied,
but no uses
declared
thereof.

part of the said A. B. and C. his wife, they, the said A. B., ad C. his wife, have, in or as of — term now last past, duly acknowledged and levied one fine *sur cognizance de droit come CEO, &c.*, unto the said C. D. and his heirs, (among and together with other hereditaments,) the said one undivided moiety or equal half part or share hereinafter granted and released, of and in the said messuages, lands, and hereditaments hereinafter described, and of and in their appurtenances; but no uses have yet been declared of the said fine.

Conveyance by fine. (284.) Whereas by a fine *sur cognizance de droit come CEO, &c.*, duly acknowledged and levied by the said A. B., and C. his wife, in or as, &c., in pursuance of a covenant for that purpose entered into, by an indenture bearing date &c., and made &c., and by force of a declaration of the uses of the said fine in the same indenture contained, the messuages and other hereditaments hereinafter particularly mentioned, and intended to be hereby granted and released, with their appurtenances, were limited and assured unto and to the use, &c.

Conveyance (285.) Whereas by indentures of lease

and release, bearing date respectively the &c., the release being made or expressed to be made between A. B. and C. his wife of the first part, C. D. of the second part, and E. F. of the third part, and by a fine *sur cognizance de droit come ceo*, &c., duly acknowledged and levied by the said A. B. and C. his wife, in or as of — term, in the — year of the reign, &c., in pursuance of a covenant for that purpose entered into by the said A. B., in and by the said indenture of release, and by force of a declaration of the uses of the said fine in the same indenture contained, in consideration of the sum of £— to the said A. B., paid by the said C. D., the messuages, lands, and other hereditaments hereinafter particularly mentioned, and intended to be hereby granted and released, with the appurtenances, were conveyed, limited, and assured unto and to the use, &c.

(286.) Whereas a fine *sur cognizance de droit come ceo*, &c., was, in, or as of — term, in the — year of the reign, &c., acknowledged and levied in His Majesty's Court of Common Pleas at Westminster by A. B. and C. D., as cognizors thereof, to E. F. and G. H., as cognizees thereof, of the mes-

Fine adverse
to the right
of person
entitled, and
desire to
avoid same.

suages, lands, and other hereditaments hereinafter mentioned, (that is to say), [*here insert parcels from the fine*]. And whereas the said B. B. is entitled to the said mesuages, lands, and other hereditaments comprised in the said fine, and is desirous that an entry should be made for the purpose of avoiding the effect, if any, of the said fine, and of all and every other fine and fines, if any, that have been levied adverse to the right of the said B. B., or to the right of any person under whom he may or ought to claim. (e)

FREIGHT.

^{Agreement to let ship to freight.} (287.) Whereas the said A. B. hath agreed to let to freight, and the said C. D. hath agreed to hire, the ship or vessel called —, [*or, — tons of the ship or vessel called —,]* of the burthen of &c., or thereabouts, upon the terms hereinafter mentioned.

(e) These are the Recitals usually inserted in a power of attorney to enter and avoid a fine. Care should be taken that the parcels correspond with the description given in the fine; and when the entry is made, (which must be on the land), it should be declared to be for the express purpose of avoiding the fine. See 5 Crui. Dig. 254.

(288.) Whereas A. B., master of the ship or vessel called —, of the burthen of — tons, or thereabouts, being about to undertake a voyage to —, and thence to —, hath by charter-party, [or, bill of lading,] dated &c., let unto the said C. D. — tons of the said ship's tonnage, for her said intended voyage, to be laden with —, within such time, and in such manner, as in the said charter-party [or, bill of lading] is mentioned, at the price of — per ton for freight, primage and average, as accustomed.

Charter-party, or bill of lading, by which part of tonnage is let to freight.

GRANT. *See Advowson, Annuity.*

GUARDIAN.

(289.) And whereas by a deed-poll or instrument in writing, bearing date &c., under the hand and seal of the said A. B., (after reciting that the said A. B. had attained the age of fourteen years and upwards,) he the said A. B. did nominate and appoint the said C. D. to be his guardian and curator, until he should attain the age of twenty-one years. (f)

Appoint-
ment of
guardian by
infant.

(f. See Mr. Hargrave's note to Co. Litt. 88, b. n. 66, and Bac. Abr. tit. "Guardian."

Appoint-
ment of
guardian by
order of
court.

(290.) And whereas by an order of the High Court of Chancery, bearing date the &c., A. B. of &c., hath been appointed the lawful guardian of the said C. D.

Appoint-
ment of
guardians
by will.

(291.) And the said testator, by the said will, appointed the said A. B. and C. D. to be guardians of the persons and estates of his said son, A. A.. during his minority, and of his said daughter, C. A., during her minority or discoverture.

Renuncia-
tion of trusts
and guar-
dianship.

(292.) And whereas by a deed poll, or instrument in writing, under the hand and seal of the said A. B., bearing date &c., he the said A. B., did waive, disclaim, relinquish, and wholly give up all and every the gifts, devises, bequests, trusts, powers, and authorities whatsoever, in and by the said will given to and reposed in him, and did also waive, renounce, disclaim, and refuse to accept the said guardianship.

HEIRSHIP.

Pedigree.

(293.) And whereas the said A. B. is the eldest son and heir at law of the said B. B., who was the elder brother and heir at law

of the said C. B., who was the eldest son and heir at law of the said D. B. (g).

(294.) And whereas the said A. B. departed this life on or about &c., intestate, leaving the said C. B., his eldest son and heir at law.

(295.) And whereas the said A. B. and C. B. are all infants, under the age of twenty-one years, and are the only sons and co-heirs at law, according to the custom of gavelkind, in the said county of Kent, of the said B. B.

(296.) And whereas the said A. B. and C. B. are the daughters, and only surviving children of the said B. B., the son, who was the only son and heir at law of the said B. B., the testator; and, as such, are the co-heirs of the said B. B. their father, and the said B. B. their grandfather.

(297.) And whereas the said A. B. departed this life on or about the &c., whereupon the said C. B. became seised of the said messuages, lands, and other hereditaments comprised in, and conveyed by, the

(g) As to proving pedigrees, see Appendix, Note (D.)

said hereinbefore in part recited indentures of, &c. with the appurtenances, for an estate tail male, [or, female] in possession.

Descent of
fee, now
vested in
heiress or
her husband.

(298.) And whereas upon the death of the said A. B. the legal estate in fee simple of and in the said messuage, lands, and other hereditaments, reconveyed to the said B. B. as aforesaid, descended upon the said D. D. as heiress at law of the said B. B., and the same is now vested in the said D. D., or in her said husband in her right.

Descent of
fee subject
to a mort-
gage.

(299.) And whereas the said A. B. departed this life on or about the &c., intestate, leaving the said C. B. his eldest son and heir at law, whereupon the legal estate in fee simple, of and in the said messuages, lands, and other hereditaments, comprised in and conveyed by the said hereinbefore in part recited indentures, of &c., descended upon, and became, and now are vested in, the said C. B., subject to the repayment of the said sum of £— and interest, [or, subject to the said term of — years, and the principal money and interest thereby secured.]

Descent of
legal estate
in part of
certain
estates.

(300.) And whereas the said A. B. departed this life on or about &c., intestate,

leaving the said C. B., his daughter and only child and heiress at law, whereupon the legal estate in fee simple of and in one undivided third part or share of the manors and other hereditaments comprised in the hereinbefore in part recited indentures of, &c., descended upon, and became, and now are vested in the said C. B., as tenant in common with the said E. F. and G. H.

INCLOSURE.

(301.) And whereas it would be advantageous to the several persons interested in the said commons and waste lands, if the same were divided and inclosed, and specified parts or shares thereof allotted to the several persons interested therein, according to their respective estates, rights, and interests in the same; but the beneficial purposes aforesaid cannot be effected without the aid and authority of parliament.

Expediency
of Inclosure
Act.

(302.) And whereas the said common and waste grounds in their present state are incapable of any considerable improvement, but if the same were divided and allotted

Id. Another
form.

between and amongst the several persons interested therein; according to their respective properties, rights, and interests, and such allotments enclosed, the same might be cultivated and improved to the manifest advantage of the said several persons; and such division, allotment, and inclosure, would tend greatly to the improvement of their estate; but such division, allotment, and inclosure, cannot be effected without the aid and authority of Parliament.

Inclosure
Act, appoint-
ing Commis-
sioners.

(303.) And whereas by an Act of Parliament made and passed in the — year of the reign of &c., intituled "An Act, &c." A. B., of &c., and C. D., of &c., were appointed Commissioners for the purpose of dividing, enclosing, and allotting, &c. (a)

(a) If a title depend on an Inclosure Act, it is necessary to show not only a good title to the allotment, but also to the estate or interest in respect of which the allotment was made. And if the allotment be made in respect of different estates, held under different titles, any part of the allotment is subject to each of the titles; and, consequently, as no appointment can be made without an act of Parliament, it is necessary that the several titles should be proved before any part of the allotment can be strictly marketable. Mr. Preston mentions a case in which it was reasonably computed that there

(304.) And whereas by an award in writ- Allotment under Inclosure Act.
ing, bearing date &c., under the hands of

must have been two hundred different abstracts to show the real state of the title.

A purchaser is entitled to a King's Printer's copy of the Private Act of Inclosure, which is usually rendered admissible as evidence; but if there be no clause to that effect, then the copy should be verified by an examination of the original in the parliamentary office. The copy of the Act should be accompanied with a copy of, or an extract from, the award of the Commissioners. From these documents it may be ascertained, whether or not the award was made according to the directions of the Act; and whether or not the allotment was made in respect of the property to which a title is shown. If the award, as is frequently the case, omits to state specifically the property in respect of which the allotment was made, proof of identity must be adduced.

If an allotment be made to one who proves to be not the only proprietor, and the other persons entitled, have no estate expressly given to them, yet it is held that the allotment shall enure to the benefit of all persons interested. *Doe d. Sweeting v. Hellard*, 9 B. & C. 801.

We may add that every allotment is of the tenure of free and common socage, even if given in respect of lands of copyhold or leasehold tenure. *Doe d. Lowes v. Davidson*, 2 M. & S. 175; *Townley v. Gibson*, 2 T. R. 701; *Revell v. Jodrell*, 2 T. R. 424; *Doe d. Sweeting v. Hellard*, 9 B. & C. 790. This consequence is usually obviated by an express provision in the act, that all allotments shall be of like tenure with the lands in respect of which they are made.

the Commissioners named and appointed in and by an Act of Parliament made and passed in the &c., intituled "An Act &c." the said Commissioners did assign, set out, and allot unto the said A. B. the piece or parcel of land therein and hereinafter described, and intended to be hereby granted and released with the appurtenances, in right of the lands and hereditaments comprised in the said indentures of lease and release, of the &c.

Id. Another form. (305.) And whereas under or by virtue of an Act of Parliament made and passed in the — year of the reign of — intituled "An Act for dividing and enclosing the open and common fields, meadows, common and waste grounds, in the lordship of &c." such of the messuages, lands, and hereditaments as are in the schedule hereunder written, or hereunto annexed, mentioned to be of the nature of copyhold and not of freehold tenure, were allotted by the Commissioners under the said Act in lieu of the copyhold lands so devised by the said will of the said A. B., as aforesaid.

That award did not distinguish the titles and estates in respect of which allot-

(306.) And whereas at and subsequently to the respective times of passing the said recited acts of the &c., and of making the

said respective awards, the said A. B. was seized of, or otherwise well entitled to, divers messuages, cottage, farm, lands, tenements, and hereditaments of different tenures, situated &c., held by him for different estates, and under various different titles; but the said Commissioners, acting in the execution of the said respective Acts of Parliament, did not by their said respective awards set out distinct and several allotments, for, or in lieu, or in respect of such respective messuages, cottages, farms, lands, tenements, and hereditaments, distinguishing the same respectively, and the titles, estates, and tenures, in respect of or under which they were allotted or exchanged; and it is therefore expedient that provision should be made for supplying such omission as aforesaid of the said Commissioners, in the manner hereinafter mentioned; but the same cannot be effected without the aid and authority of Parliament.

(307.) And whereas the said A. B. and C. D., as such Commissioners as aforesaid, by a certificate or instrument in writing, under their respective hands, bearing date &c., did consent that the sum of £— should

Certificate of
Commiss-
sioner as to
expenses.

be charged on the allotment hereinbefore mentioned to have been made to the said E. F., which said sum of £— they the said A. B. and C. D. did adjudge to be necessary to pay and defray the share of him, the said E. F. of the charges and expenses incident to and attending the obtaining the said hereinbefore in part recited act, and of carrying the same into effect, and of charging the said lands by these presents. (h)

INDEMNITY.

Agreement
to indemnify
purchaser on
account of
the loss of
title-deeds.

(308.) And whereas it appears that the said hereinbefore in part recited indentures of mortgage of the &c., and all subsequent assignments thereof up to the day of the date of the said indenture of &c., are not among the title-deeds belonging to the said manor, messuages, lands, and hereditaments ; and it being alleged that the same are lost or mislaid, it hath been agreed that the said A. B. should be indemnified as hereinafter mentioned.

(h) See 41 Geo. III. c. 109, s. 30.

(309.) And whereas various objections were on the part of the said A. B. taken to the title of the said C. D. to the mes- suages, lands, and other hereditaments comprised in the said hereinbefore in part recited indentures of &c. And whereas in order to induce the said A. B. to complete the said purchase, notwithstanding such objections, he the said C. D. hath proposed and agreed to indemnify the said A. B., his heirs, appointees, and assigns, in manner hereinafter expressed ; and the said A. B. hath completed his said purchase upon the faith of such agreement.

Objections to title and agreement to indemnify purchaser.

(310.) And whereas the said A. B. and C. D. have applied to the said parties hereto of the second part, and requested them to take measures for enforcing the benefit of the said several securities against the said E. F., as the means of relieving the said A. B. and C. D. from their respective liabilities as the sureties of the said E. F.; and the said parties hereto of the second part have consented and agreed to comply with that request, so far as to them shall seem expedient, upon the terms that the said A. B.,

Agreement upon being indemnified to enforce securities in order to relieve sureties.

and C. D. shall indemnify the said parties hereto, of the second part, from and against all losses and expenses to be incurred by them by reason of any measures to be adopted for enforcing the benefit of the said securities as aforesaid.

Agreement to indemnify purchaser against rent and covenants.

(311.) And whereas upon the treaty for the said purchase it was agreed that the said A. B. should indemnify the said C. D. against the said rent and covenants in the manner hereinafter expressed.

That purchased property is subject to a rent-charge, and agreement to demise lands to purchaser as an indemnity.

(312.) And whereas the said messuages, lands, and other hereditaments comprised in and conveyed by the said hereinbefore recited indentures of &c., [*conveyance to purchaser,*] are subject to the payment of a yearly rent-charge or annual sum of £—, under or by virtue of an indenture, bearing date &c., and made between &c.: And whereas for the purpose of indemnifying and exonerating the said A. B., and also the said messuages, lands, and hereditaments of and from the payment of the said yearly rent-charge, the said C. D. hath agreed to demise the lands and hereditaments herein-after described, unto the said A. B. for the

term, and upon the trusts, hereinafter mentioned. (a)

INFANT. *See Age.*

(313.) And whereas the said A. B. is the eldest son and heir at law of the said C. D., and is an infant under the age of twenty-one years, and it is intended that he should execute these presents after he shall be adult, or an order of the High Court of Chancery shall be obtained for that purpose.

(314.) And whereas by an order of the High Court of Chancery, bearing date the &c., made by &c., in the matter of the said A. B., an infant, on the petition of the said C. D., it was ordered to be referred to the Master in rotation, to inquire how the estate in the said petition mentioned, (being the hereditaments comprised in the hereinbefore in part recited indenture of mortgage,) was

(a) Indemnities of this kind are framed in a variety of ways. Sometimes part of the purchase-money is invested in the funds in the names of trustees, or a bond, or a warrant of attorney is given. Sometimes an estate is demised for a long term, or the fee conveyed, or it is charged with a rent.

vested in the said A. B., and whether he was an infant and trustee within the intent and meaning of the act of Parliament passed in the first year of the reign of his present Majesty, cap. 60.

Report of
Master find-
ing infant a
trustee with-
in the act
1 W. IV. c.
60.

(315.) And whereas B. B., the Master in rotation, to whom the said matter was referred, by his report, bearing date the &c., found that the said principal sum of £—, secured by the said indentures of the &c., and the interest thereon, had been paid off and discharged in the lifetime of the said C. D. in manner aforesaid, and that the legal estate in fee simple in the hereditaments comprised in the said indenture, was then vested in the said A. B., as the heir at law of the said A. A. deceased, and that he was an infant and trustee within the intent and meaning of the said act of Parliament.

Order of
Court con-
firming re-
port, and di-
recting in-
fant trustee
to convey.

(316.) And whereas by an order of the said Court of Chancery, bearing date &c., made by &c., it was ordered that the said Master's report should be confirmed, and that the said A. B. should convey the estate therein mentioned, according to the said report, pursuant to the said act of Parliament.

(317.) And whereas in pursuance of an act of Parliament made in the first year of the reign of his present Majesty, intituled "An Act for Amending the Laws respecting Conveyances and Transfers of Estates and Funds vested in Trustees and Mortgagees, and for enabling Courts of Equity to give Effect to their Decrees and Orders in certain Cases," the said A. B. hath, by an order of the High Court of Chancery, made on or about the &c., upon the petitions of C. D., been directed to convey the messuages, lands, and other hereditaments comprised in the said hereinbefore in part recited indenture of release, and intended to be hereby granted and released, with the appurtenances, unto and to the use of the said C. D., his heirs, and assigns for ever.

That infant
trustee has
been directed
to convey by
order of
Court.
(*Short form.*)

INQUISITION. *See Felo de se, Lunacy.*

INSOLVENT DEBTOR.

(318.) And whereas under or by virtue of the provisions of an act of Parliament, made and passed in the seventh year of the reign

Application
for discharge
under the
Insolvent
Debtors' Act.

of his late Majesty, King George the Fourth, intituled "An Act to Amend and Consolidate the Law for the Relief of Insolvent Debtors in England," the said A. B. being then in custody for debt, applied by petition to the Court for the relief of insolvent debtors, praying to be discharged under the provisions of the said act.

Conveyance
by insolvent
debtor to
provisional
assignee.

(319.) Whereas by indenture, bearing date the &c., between A. B., an insolvent debtor, then a prisoner in the —, of the one part, and the said C. D., as such provisional assignee as aforesaid, of the other part, all the estate, right, title, interest, and trust of the said insolvent debtor in and to all the real and personal estate of the said insolvent debtor, in possession, reversion, remainder, or expectancy, except the wearing apparel and other such necessaries of the said insolvent debtor and family, not exceeding in the whole the value of £20, were, among other things, conveyed and assigned to the said C. D., as such provisional assignee as aforesaid, his successors, and assigns. (b)

(b) From the form of conveyance by the provisional assignee, as prescribed by the 1 W. IV. c. 38, s. 7.

(320.) And whereas upon the hearing of the petition of the said A. B., the said Court adjudged him entitled to the benefit of the said act. That Court adjudged insolvent to be entitled to the benefit of the act.

(321.) And whereas by an indenture, bearing date &c., and made or expressed to be made between C. D., provisional assignee of the estate and effects of insolvent debtors in England, of the one part, and the said E. F. of the other part, after reciting the lastly hereinbefore in part recited indenture, the said C. D., in obedience to an order of the said Court, did convey, assign, transfer, and set over unto the said E. F., his heirs, executors, administrators, and assigns, all the estate, right, title, interest, and trust, of, in, and to all the real and personal estate and effects whatsoever and wheresoever, and of what nature or kind soever, present and future, which, by virtue of the said therein and hereinbefore in part recited indenture, then were in any way vested in the said C. D., as such provisional assignee as aforesaid: to have and hold, receive and take the same, with their appurtenances, unto the said E. F., his heirs, executors, administrators, and assigns, according to the respective natures,

Conveyance by provisional assignee to permanent assignee.

properties, and tenures thereof; in trust, nevertheless, for the use, benefit, and advantage of the creditors of the said insolvent debtor who should be entitled to share in the dividend of the said estate and effects, and to and for such other uses, intents, and purposes, and in such manner and form, as in the said recited indenture expressed, of, and concerning the same. (c)

(c) The form of conveyance here recited is prescribed by the 1 W. IV. c. 38, s. 7, which enacts that "every conveyance and assignment hereafter to be made and executed by the provisional assignee for the time being to any other assignee or assignees, by virtue of any order of the said Court, shall be in such form as is to this act annexed; and that every such conveyance and assignment, and also every conveyance and assignment at any time heretofore made and executed by the provisional assignee for the time being, in obedience to any order of the Court for relief of insolvent debtors, shall be deemed and taken to be valid and effectual to all intents and purposes whatsoever, and fully and effectually to vest and to have vested all and every estate and estates, real and personal, and all and every right, title, interest, and trust, in and to the same, of what nature or kind soever, to which the insolvent debtor in each case respectively shall or may be, or shall or may have been entitled in any manner, or by any means whatsoever, or which such insolvent debtor shall or may be, or shall or may have been required by law to convey and assign in trust for his or her creditor."

(322.) And whereas on or about the &c., the said A. B. was discharged from the custody of &c., under and by virtue of an act of Parliament passed in the seventh year of the reign of his late Majesty King George the Fourth, intituled "An Act to amend and consolidate the Laws for the Relief of Insolvent Debtors in England ;" and pursuant to the provisions of the said act, by indenture of provisional assignment, bearing date &c., and made between &c., and by an indenture of assignment bearing date &c., and made between C. D., the then provisional assignee of the estate and effects of insolvent debtors in England, of the one part, and E. F. of the other part, All &c. were conveyed, assigned, transferred, and set over unto the said E. F., his heirs, executors, administrators, and assigns, in trust nevertheless for the use, benefit, and advantage of the creditors of the said insolvent debtor, who should be entitled &c. [as before.]

(323.) And whereas the said E. F. in obedience to the provisions of the hereinbefore mentioned act, convened a meeting of the creditors of the said A. B. on the &c., by notice in the London Gazette, and the news-

Discharge of insolvent, assignment to and from provisional assignee. (Short form.)

Resolution of creditors that real estate should be sold by auction.

paper called the —, and circulated at —, where the said A. B. resided previously to his imprisonment, which notice appeared in the Gazette and newspaper respectively, on the &c., and at such meeting, the major part in value of the creditors of the said A. B., then present, by writing under their hand, resolved, approved, and directed that the real estate of the said A. B., should be sold by auction, at &c. [See tit. "*Auction.*"]

INSTITUTION AND INDUCTION.

*Institution
of rector.*

(324.) Whereas the Right Reverend Father in God A., by the grace of God Bishop of B., by his mandate, under his episcopal seal, bearing date, &c., did admit the said A. B. to the rectory of the said parish church of W., and did institute and invest him rector of the said church, and its rights, members, and appurtenances.

*Induction
of rector.*

(325.) And whereas by a certain instrument of induction, under the seal of &c., bearing date &c., reciting therein the aforesaid institution and investiture of the said A. B., directed to certain persons therein

named, the said A. B. was on the &c., inducted into the real, actual, and corporal possession of the said rectory of the parish of W., with its rights, privileges, and appurtenances.

INSURANCE. *See Policy.*

INTESTACY.

(326.) And whereas the said A. B. departed this life on or about the &c., intestate, leaving C., the wife of D. D., his only child and heir at law. (d)

(327.) And whereas the said A. B. departed this life on or about the &c., intestate as to his real estates.

(328.) And whereas the said A. B. departed this life on or about &c., intestate so far as relates to all and every the messuages, lands, and hereditaments vested in him upon

(d) Intestacy is proved by the production of letters of administration taken out to the alleged intestate, or, if he has made a will, a plain copy should be furnished to show that as to the property in question no devise was made. See *Stevens v. Guppy*, 2 Sim. and Stu. 439; 2 Prest. Abs. 455.

trust for sale as aforesaid, or otherwise, as hereinbefore mentioned.

Intestacy as to mortgaged estate. (329.) And whereas the said A. B. departed this life on or about &c., intestate as to the said messuages, lands, and hereditaments so conveyed to him in mortgage as hereinbefore is mentioned. (e)

ISSUE.

Issue one child only. (330.) And whereas the said A. B. and C. his wife have issue now living one son, called L. B., and no other child.

Issue of marriage one son only, now an infant. (331.) And whereas the said A. B. intermarried with C. D. on the &c., and hath issue by her one son, namely, B. B., now an infant under the age of twenty-one years, and no other child.

Death without issue. (332.) And whereas the said A. B. departed this life on or about the &c., without leaving issue.

(e) If the intestacy is occasioned by the will not having been rightly executed, this is sometimes stated thus: "the will of the said A. B. not being executed and attested in such manner as the law requires for the passing of real estates."

JOINTURE. *See Settlement.*

JUDGMENT. *See Action, Warrant of Attorney.*

(333.) And whereas default being made in payment of the said sum of £— and interest, on the day mentioned in the condition of the said in part recited bond, he the said A. B. did, in — term last past, obtain a judgment in His Majesty's Court of — at Westminster, in an action of debt on the said bond, for the sum of £—, besides costs of suit, against him the said C. D.

(334.) And whereas the said A. B. hath, ^{Id. Another form.} suffered a judgment to be signed and entered up against him of record in the Court of — at Westminster, as of — term, now last past, in an action of debt on bond, at the suit of B. B. for the sum of £—, besides costs of suit.

(335.) And whereas in an action brought in His Majesty's Court of — at Westminster, in — term, by the said A. B. against the said C. D., the said A. B. obtained judgment

That plaintiff obtained judgment and became entitled to execution.

for the sum of £—, besides costs of suit, which costs being taxed amounted to the sum of £—, and thereupon the said A. B. became entitled to sue out execution against the said C. D., for the two several sums of £— and £—, making together the sum of £—.

Judgment entered up on warrant of attorney.

(336.) And whereas judgment hath been entered up against the said A. B. by virtue of the said warrant of attorney.

Judgment in action of debt.

(337.) Whereas a judgment hath been obtained, as of — term last past, in His Majesty's Court of —, at Westminster, against the said C. D. in an action of debt for money had and received, &c., at the suit of the said A. B., for the sum of £—, and costs of suit, as appears by the record of the said judgment.

Agreement to assign Judgment.

(338.) And whereas the said A. B. hath agreed to assign the said judgment unto the said B. B., in consideration of the sum of £—.

Agreement to satisfy judgment upon having the same assigned.

(339.) And whereas the said A. B. being unable to pay off and satisfy the said judgment hath applied to and requested the said C. D. to pay off and satisfy the same, which

he hath consented to do, upon having the said judgment assigned to him as hereinafter mentioned.

(340.) And whereas in pursuance of the Satisfaction of judgment. said agreement, satisfaction hath been entered up on the record of the said judgment.

LEASE. *See Bargain and Sale, Lunacy.*

(341.) Whereas the said A. B. hath contracted and agreed with the said C. D. for a lease of the said messuage, lands, and premises hereinafter particularly mentioned and described, for the term of — years, from the day of the date of these presents, at the yearly rent of £—, payable as hereinafter is mentioned, and subject to the several covenants, provisions, conditions, and agreements hereinafter contained. And whereas the said E. F. hath consented to join in these presents, in manner hereinafter mentioned. (f)

(342.) Whereas the said A. B. hath contracted, &c. And whereas the licence and consent in writing of the lord of the manor

(f) *Ante*, p. 23.

of D., whereof the said messuage and premises are holden, hath been obtained for demising the said messuage and premises, according to the custom of the said manor. (g)

Lease for
years, sub-
ject to cove-
nants and
conditions.

(343.) Whereas by indenture of lease bearing date &c., and made between A. B. of &c., of the one part, and C. D. of &c. of the other part, for the considerations therein mentioned, the said A. B. did demise and lease unto the said C. D., all &c.: to hold

(g) A copyholder, except by special custom, cannot grant a lease of his copyhold tenement beyond the term of a year, without the licence of the lord. (See 1 *Scriv.* 544, 3rd. ed., and the cases there cited.) The power of licensing is not customary, but annexed to the person of the lord in respect of his estate in the manor. (Co. *Copyh.* s. 44, p. 122.) If, therefore, the lord being only tenant for life of the manor, license a copyholder to demise for a term of years, and die the next day, any estate created by virtue of the licence would be determined; unless, indeed, it had been given by force of a power. It may be useful to add that if the licence appears to have been granted by the steward, it should be ascertained that he had power to do so, either by express words in his patent, by special authority from the lord, or by some particular custom of the manor; for a steward *virtute officii*, can execute only what is warranted by the custom of the manor; and, as before observed, a right to licence is a *personal*, not a customary right. (Co. *Copyh.* s. 44, p. 122; *Gilb. Ten.* 333; and see 1 *Scriv.* 546; 2 *Watk.* 117.)

the same unto the said C. D., his executors, administrators, and assigns, for the term of — years, at and under the clear yearly rent of £—, to be paid by four equal quarterly payments, and with, under, and subject to the several covenants, provisoies, conditions, and agreements in the same indenture contained, and on the part of the lessee to be observed, performed, and kept.

(344.) In his actual possession now being Lease and actual entry. by virtue of a demise to him thereof made, by the said A. B. by an indenture bearing date &c., for the term of one whole year, commencing from the &c., and by force of an actual entry made by the said C. D. in or upon the same premises.

(345.) Whereas by an indenture bearing 1d. Another form. date &c. And whereas the said A. B. hath under and by virtue of the said indenture, entered into and upon, and taken possession of the said premises, and paid to the said A. B. one penny, in part of the said rent of one shilling, which he the said A. B. doth hereby admit and acknowledge. (h)

(h) This Recital was drawn by the late Mr. Charles Butler: his remarks upon the draft from whence it is taken are subjoined:—

“ The reason for deviating from the general plan of a

Renewable
lease for
lives.

(346.) And whereas by an indenture of lease bearing date on or about, &c., and

lease for a year in the present draft, is because such a lease for a year from a corporation is a nullity, and therefore the release grounded upon it would be void. The lease for a year on the common plan, derives its effect from the statute of uses, and amounts to a bargain and sale. The operation of a bargain and sale is to make the bargainer seised to the use of the bargee. To this use the statute annexes the possession. The bargee by having this possession, is enabled to take a release of the reversion, which operates in the first of the four modes mentioned by Lord Coke for the operation of releases, viz.: by way of enlarging the estate of the lessee. This is the general mode by which conveyances by lease and release have their effect. But they cannot operate in this manner when used by a corporation, because a corporation cannot be seised to a use; and therefore a lessee, under such a lease for a year from a corporation, would not be within the statute of uses, or have the possession executed in him by it. It is for this reason that corporations generally convey by feoffment. But as it might be apprehended that a feoffment might imply, or amount to a warranty, and in the present case no warranty is to be taken from the corporation, it did not seem advisable to adopt that mode of conveyance. I have therefore drawn the lease for a year as a common law lease, and the lessee must make an actual entry on the premises, and pay something in part of his rent. This gives him possession, and then he is enabled to accept the release. The Recital of this is introduced into the release to preserve the memory of the transaction when the circumstances might otherwise be forgotten." MS.

made, or expressed to be made, between A. B. of the one part, and the said C. D. of the other part, and by livery of seisin, duly made and taken in pursuance thereof, in consideration of the surrender of the said hereinbefore mentioned lease of the &c., all and singular the hereditaments and premises mentioned and comprised in the said hereinbefore in part recited indenture of the &c., were demised and leased unto the said C. D., his heirs, and assigns, from thenceforth during the natural lives of &c., and the survivors and survivor of them, at and under the yearly rent of £—, and subject to the covenants, conditions, and agreements, in the said indenture now in recital contained, and on the part of the tenant or lessee to be paid, observed, and performed.

(347.) And whereas the said A. B. hath agreed to become a party to these presents for the purpose of licensing the assignment hereinafter contained; but not further or otherwise.

(348.) And whereas by a deed-poll or instrument in writing, under the hand and seal of the said A. B. bearing date on or about the &c., the said A. B. did give leave and licence

Agreement
to become
party for the
purpose of
licensing as-
signment.

Licence to
assign.

to the said C. D. to alien and assign unto any person or persons whomsoever, all and singular the premises comprised in, and intended to be demised, by the said herein-before in part recited indenture of demise, with the appurtenances thereunto belonging, subject to the yearly rent and heriots, and to the performance of the covenants, conditions, and agreements in the said indenture of demise contained. (i)

(i) If there be a condition for re-entry on alienation, or on alienation without licence from the lessor, and a licence is once granted, even though it be given to one only of the lessees, or restrained to a particular alienee, or confined to a part only of the estate, yet this for ever discharges the whole from the condition. (*Lylds and Crompton's Case*, Cro. Eliz. 816; 4 Rep. 120; *Brummell v. Macpherson*, 14 Ves. 173; *Fox v. Whitchot*, 2 Bulst. 296; S. C. Cro. Jac. 398; 4 Rep. 120; *Roe v. Harrison*, 2 T. R. 425.) And if the condition consist of several branches, a dispensation with any will be a dispensation with all; for, according to the doctrine of the common law, a condition is so entire in its nature, that it cannot be apportioned. (*Dumpor's Case*, 4 Rep. 119, S. C. Cro. Eliz. 815; and see Vin. Abr. tit. "Condition," (G. d.) Bac. Abr. tit. "Condition," (O.) 3; 2 Prest. Conv. 197.) Strange to say this principle is held to be applicable even where the condition is in fact complied with, as upon alienation with licence according to the terms of the condition. Such a principle thus applied does indeed "savour of great refinement,"

(349.) And whereas by divers mesne assignments and acts in the law, and ultimately by an indenture, bearing date on or about the &c., and made or expressed to be made between A. B. of the one part, and the said C. D. of the other part, the messuages, lands, and other hereditaments comprised in and demised by the said hereinbefore in part recited indenture of lease, were assigned unto, and became vested in, the said C. D. for the residue and remainder of the said term of — years therein, then to come and unexpired, subject to the rent, covenants, conditions, and agreements, in the said indenture of lease reserved and contained.

as Mr. Preston observes; for it assumes that a compliance with the condition nullifies it!

If it be thought advisable to revive the condition, this may be done where the lease is for a term of years by a defeasance, and this seems to be the most effectual way. It was supposed, indeed, that if the licence contained a restriction, that the assignee, should hold, subject to the payment of the rent, and to the performance of the covenants and conditions in the original lease, this would preserve the operative force of the condition, so as to guard against future assignments. But such an opinion is not now considered satisfactory.
(2 Prest. Conv. 198.)

*Expediency
of vesting in
trustees a
power of
leasing, but
which cannot
be done with-
out the aid of
Parliament.*

(350.) And whereas it would be for the benefit of the said A. B. and C. D., and their respective issue, if powers were given to and vested in trustees for a limited period to grant leases of the said estates, or any part thereof, and of the iron, ironstone, coal, and other minerals lying and being in or under the same, with powers for working and getting the said minerals, and selling and disposing of the same for certain terms of years, at and under such rents, royalties, and reservations, and upon such terms and conditions as are usual in such cases: but such powers cannot be effectually given without the aid and authority of Parliament.

*Power to
grant build-
ing leases.*

(351.) And by the indenture now in re-cital, it was agreed and declared that it should and might be lawful to and for the said A. B. during his life, and, after his decease, to and for the said C. B., as and when by virtue of the limitations therein-before contained, they respectively should be, for the time being, in the actual possession of or entitled to the rents, issues, and profits of the said manors, messuages, lands, and other hereditaments thereinbefore granted

and released ; and to and for the said C. D. and E. F., and the survivor of them, and the executors and administrators of such survivor, during the minority or respective minorities of any child or children of them the said A. B. and C. his wife, who, for the time being, should, by virtue of the limitations thereinbefore contained, be entitled to the actual possession, or to the receipt of the rents, issues, and profits of the said manors, messuages, lands, and other hereditaments thereinbefore granted and released, by any deed or deeds, writing or writings, to be sealed and delivered by him or them respectively, or the said C. D. and E. F., or the survivor of them, or the executors or administrators of such survivor respectively, (as the case might require,) in the presence of and to be attested by two or more credible witnesses, to demise or lease all or any part of the lands and other hereditaments thereinbefore granted, released, or expressed and intended so to be, (except, &c.,) to any person or persons who should improve the same, or covenant and agree to improve the same, by erecting and building thereon any

new house or houses, erections or buildings, or to rebuild or repair any of the messuages, tenements, erections, or buildings whatsoever, which then were or thereafter should be, on the same hereditaments, or any part thereof, or to expend such sum or sums of money in improvements thereof respectively as should be thought adequate for the interests therein respectively to be departed with, for any term or number of years not exceeding ninety-nine years, to take effect in possession, and not in reversion, or in the way of a future interest; so that in every such demise or lease there should be reserved the best and most improved yearly rent or rents, to be payable during the continuance of the use or estate, uses or estates, to be created thereby, and to be incident to the immediate reversion of the hereditaments so to be demised or leased that could reasonably be had or gotten for the same, without taking any fine, premium, or foregift, or any thing in the nature of a fine, premium, or foregift for the making thereof, and so that there should be contained in every such demise or lease, a clause in the nature of a condition of re-entry, on non-

payment of the rent thereby to be reserved, by the space of twenty-one days.

(352.) And by the indenture now in re-
cital, it was provided that it should and might
be lawful to and for the said A. B. and C. D.,
by any deed or deeds to be executed by
them respectively in the presence of and to
be attested by two or more credible wit-
nesses, to demise or lease the said messua-
ges, lands, and other hereditaments, or any
of them, or any part thereof, to any person
or persons for any number of years not ex-
ceeding twenty-one years in possession, at
rack rent; the lessee or lessees executing
counterparts of such leases, and thereby
covenanting for the payment of the rent, and
such lease containing a clause in the nature
of a condition of re-entry on nonpayment
thereof for the space of twenty-one days.

Power to
grant leases
at rack rent.
(*Short form*)

LEASE AND RELEASE.

(353.) And whereas by indentures of lease and release, bearing date respectively the &c., the release being made or expressed to be made between A. B. of the one part, and

M

the said C. D. of the other part, in consideration of the sum of £— to the said A. B. paid by the said C. D., all and singular the messuages, lands, and other hereditaments hereinafter particularly mentioned and described, and intended to be hereby granted and released, with their appurtenances, were [together with divers other hereditaments] conveyed and limited unto and to the use of the said C. D., his heirs, and assigns for ever, [or, conveyed and limited to such uses, &c. *See tit. "Uses."*]

Conveyance
by lease, re-
lease, and
fine.

(354.) Whereas by indentures of lease and release, bearing date &c., the release being made or expressed to be made between A. B. and C. his wife, of the first part, D. E. of the second part, and F. G. of the third part; and by a fine *sur cognisance de droit come ceo*, &c., duly acknowledged and levied by the said A. B. and C. his wife, in or as of — term, in the — year of the reign of, &c., in pursuance of a covenant for that purpose entered into by the said A. B. in and by the said indenture of release, and by force of a declaration of the uses of the said fine in the same indenture contained, in consideration of the sum of £— to the said A. B. paid by

the said D. E., the messuages, lands, and other hereditaments hereinafter particularly mentioned and intended to be hereby granted and released, with their appurtenances, were [together with divers other hereditaments] conveyed, limited, and assured unto and to the use of the said D. E., his heirs, and assigns for ever, [or, were conveyed, limited, and assured to such uses, &c.]

(355.) And whereas by indentures of lease and release, &c., (as in last recital,) the entirety of the messuages, lands, and hereditaments hereinafter particularly mentioned and described, and intended to be hereby granted and released, with the appurtenances, were expressed and intended to be conveyed and assured unto and to the use of the said A. B., his heirs and assigns; but in point of fact one third part only, and no more, of the said messuages, lands, and hereditaments was vested in the said A. B. and C. his wife in her right, at the time of executing the said indentures of lease and release, and of levying the said fines.

(356.) Whereas by indentures of lease and release, bearing date respectively &c., the release being made or expressed to be

made between &c., and by a common recovery duly suffered before His Majesty's justices of the Court of Common Pleas at &c., in or as of — term, in the — year of the reign of &c., in pursuance thereof, and by force of a declaration of the uses of the said recovery in the said indenture of release contained, the messuages and other hereditaments hereinafter particularly mentioned, and intended to be hereby appointed, bargained, and sold, with their appurtenances, were [together with divers other messuages and hereditaments] conveyed, limited, and assured, &c.

Conveyance
of freeholds
and lease-
holds by
lease and re-
lease, and
assignment
of even date.

(357.) And whereas by indentures of lease and release and assignment, already prepared and engrossed, the lease bearing or intended to bear date the day next before the day of the date of the release and assignment, and the release and assignment bearing or intended to bear even date herewith, the release and assignment being made or expressed to be made between, &c., the said freehold messuages and lands and hereditaments on the said ground plan delineated and coloured green, and the said leasehold piece or parcel of ground on the

said ground plan delineated and coloured red, are expressed and intended to be thereby conveyed and assigned respectively unto and to the use of or in trust for the said A. B., his heirs, appointees, executors, administrators, and assigns respectively, according to the natures of the said estates respectively.

(358.) And whereas by indentures of lease and release, bearing date &c., the release being made &c., and in pursuance of an act of Parliament passed in the — year of the reign of, &c., intituled "An Act, &c.," all and singular the messuages, lands, and other hereditaments hereinafter particularly mentioned and described, and intended to be hereby appointed and released, with their appurtenances, were conveyed, limited, and assured to such uses, &c. [See tit. "Uses."]

Conveyance
by lease and
release, and
in pursuance
of act of
Parliament.

(359.) Whereas under and by virtue of divers conveyances and assurances in the law, and particularly under and by virtue of certain indentures of lease and release, bearing date &c., the release being made or expressed to be made between &c., the messuages, lands, and other hereditaments hereinafter particularly mentioned and de-

Mesne and
ultimate con-
veyances in
fee.

scribed, and intended to be hereby granted and released, with their appurtenances, were conveyed, limited, and assured unto, and are now vested in, the said A. B. in fee simple, in trust nevertheless for the said C. D., his heirs, and assigns for ever.

LETTER OF ATTORNEY.

Letter of attorney to receive purchase-money and execute conveyances.

(360.) And whereas by a deed-poll, or instrument in writing, under the hand and seal of the said A. B., bearing date &c., he the said A. B. did depute and appoint the said C. D., his lawful attorney, to receive from the said B. B., his heirs, or assigns, the said sum of £—, the purchase-money aforesaid; and on receipt thereof, to execute all such deeds and assurances as should be necessary for vesting the said hereditaments and premises, so contracted to be sold as aforesaid, in the said E. F., his heirs, and assigns.

Letter of attorney to receive money assigned, and to give effectual discharges.

(361.) And by the indenture now in recital, the said A. B. did appoint the said C. D. and E. F., and the survivor of them, and the executors, administrators, and assigns

of such survivor, his attorneys and attorney, to call in and compel payment of the said sum of £—, and premises, and to give receipts which should be effectual discharges for the same, and for those purposes, or any of them, to use the name of the said A. B.

LETTERS PATENT.

(362.) Whereas the said A. B. some time Invention and letters patent. since invented, &c., and the full benefit and advantage of making, using, exercising, and vending, such said invention have been secured to the said A. B., his executors, administrators, and assigns, and his and their deputies, servants, or agents, or such others as he the said A. B., his executors, administrators, or assigns should agree with, by letters patent, bearing date on or about the &c., for and during the term of — years; a specification of which said invention was duly enrolled in the High Court of Chancery on or about the &c.

(363.) And whereas the said A. B. hath Contract for licence to use invention. contracted and agreed with the said C. D. and E. F. for the absolute sale to them of

full liberty and licence of making, using, and exercising the said invention, not only for and during the said term of — years, but also for and during any further term or terms of years for which the said benefit and advantage of the said invention may be secured to the said A. B., his executors, administrators, and assigns, by letters patent, act of Parliament, or otherwise howsoever, to the intent and in manner hereinafter mentioned, at or for the price or sum of £—.

Agreement
to become
partners in
letters
patent.

(364.) And whereas the said A. B. and C. D. have mutually agreed to become partners in the said letters patent, and the profits to arise therefrom, during all the term therein respectively now to come, and also to become partners in other patents for the term, and in the manner, and under and subject to the provisoies, conditions, covenants, and agreements hereinafter mentioned and contained.

Assignment
of letters
patent.

(365.) And whereas by an indenture, bearing date the &c., and made between the said A. B. of the one part, and the said C. D. of the other part, for the considerations therein mentioned, the said hereinbefore in part recited letters patent, and the powers and

liberties thereby granted, were assigned unto the said C. D., his executors, administrators, and assigns.

LICENCE. *See Lease, Letters Patent.*

—

LIMITATIONS. *See Uses.*

—

LOAN. *See Mortgage, Payment.*

(366.) And whereas the said A. B. hath applied to and requested the said C. D. and E. F. to advance and lend to him the sum of £—, which they accordingly agreed to do, upon having the repayment of the same, together with interest thereon in the mean time, after the rate of £— per cent. per annum, secured to them in manner hereinafter mentioned.

(367.) And whereas the said A. B. hath applied to and requested the said C. D. to advance and lend to him the sum of £—, and hath also applied to and requested the said E. F., to advance and lend to him the sum of £—, which they respectively have agreed to do upon having the repayment of the same

sums respectively, with interest thereon in the meantime, after the rate of £—, per cent. per annum, secured to them respectively, in manner hereinafter mentioned.

**Agreement
to advance
loan in cer-
tain propor-
tions.**

(368.) And whereas the said C. D. and E. F. have agreed to contribute and make up the said sum of £—, in the proportions following, that is to say, the sum of £—, part thereof, to be advanced by the said C. D., and the sum of £—, residue thereof, to be advanced by the said E. F.

**Application
for loan to
effect pur-
chase.**

(369.) And whereas the said A. B., in order to enable him to complete the said purchase, hath applied to and requested the said C. D. to advance and lend him the sum of £—, &c.

**Application
for loan to
discharge
mortgage.**

(370.) And whereas the said A. B. hath applied to and requested the said C. D. to advance and lend to him the sum of £—, in order to enable him to pay off the said sum of £—, so due and owing as aforesaid, and also to advance and lend to him the said A. B. the further sum of £—, which he the said C. D. hath agreed to do upon having the repayment of the said several sums of £—, with interest thereon in the meantime, after the rate of £— per cent. per annum,

secured to him in manner hereinafter mentioned.

(371.) And whereas the said A. B. and C. D. in order the better to enable them to carry into effect the trusts of the will of the said E. F. deceased, have applied to and requested the said B. B. to pay off the said principal sum of £— due upon the said mortgage and further charge; and to advance and lend them the said A. B. and C. D., as such trustees as aforesaid, the sum of £—, which the said B. B. hath agreed to do, upon having the repayment of the same sums respectively, and interest for the same respectively, after the rate of £— per cent. per annum, secured to him in manner hereinafter mentioned.

(372.) And whereas the said A. B. and C. his wife have applied to and requested the said C. D. to advance and lend to them the sum of £—, (being the same sum of £— as is secured, together with the interest thereof, by the bond of the said A. B. bearing even date with these presents) which he hath agreed to do upon having the repayment of the same, with interest thereon, after the rate of £— per cent. per annum, secured to him in manner hereinafter mentioned. And

they, the said A. B. and C. his wife, are desirous and have agreed, that, subject and without prejudice to the said security to be made to the said C. D., all the said messuages, lands, and hereditaments should be respectively resettled, and should accordingly be limited, settled, and assured to and for the use and purposes, and under and subject to the powers hereinafter respectively declared of and concerning the same.

Application
for loan, and
agreement
that part
shall be ap-
plied in re-
purchasing
annuity and
discharging
mortgage.

(373.) And whereas the said A. B. hath applied to and requested the said C. D. to advance and lend to him the sum of £—, &c.

(366.) And it hath been agreed by and between the said parties to these presents that the sum of £—, part of the said sum of £—, should be applied in the repurchase of the said annuity of £—, and that the sum of £—, other part thereof, should be applied in the discharge of the said sum of £— so due and owing as aforesaid, upon the said hereinbefore in part recited mortgage.

Application
for further
loan.

(374.) And whereas the said A. B. hath applied to and requested the said C. D. to advance and lend to him, the said A. B. the further sum of £—, which he the said C. D. hath agreed to do, upon having the repayment,

as well of the said sum of £—, so secured by the said hereinbefore in part recited indenture of mortgage, as also of the said further sum of £—, so to be advanced as aforesaid, together with interest thereon respectively, in the meantime, after the rate of £— per cent. per annum, secured to him in manner hereinafter mentioned.

(375.) And whereas the said A. B. hath ^{Id. Another form.} applied to and requested the said C. D. to advance and lend him the further sum of £—, which he the said C. D. hath accordingly agreed to do, upon having the repayment, as well of the said sum of £—, as of the said sum of £—, making together the aggregate sum of £—, with interest on the said sum of £—, in the meantime, after the rate of £— per cent. per annum, secured to him as well upon such of the messuages, lands, and other hereditaments, charged with the payment of the said sum of £— and interest, as are comprised in the said indentures of &c., as upon the said messuages, lands, and other hereditaments comprised in the said indentures of &c.

(376.) And whereas upon the treaty for ^{Agreement to advance loan, mortgagor cove-} the loan of the said sum of £—, it was agreed

nanting to
obtain order
for infant to
convey.

that the said A. B. should, by petition to the High Court of Chancery, or to the Court of Exchequer, obtain an order for the said C. D., the infant, to convey unto the said E. F., his heirs, and assigns, or as he or they should direct, the legal estate in fee simple, which, upon the death of the said D. D., descended upon the said C. D. the infant, of and in one undivided third part of the hereditaments comprised in the said recited indentures of lease, release, and mortgage, of the &c., but such order not having yet been obtained, the said E. F. consented to advance the sum of £—, without waiting for such order, on condition that the said A. B. should enter into the covenant hereinafter contained for obtaining such order and a conveyance in pursuance thereof.

Loan ad-
vanced on
joint account
payable on
death of one
to survivors.

(377.) And whereas the said sum of £—, advanced to the said A. B. as hereinbefore mentioned, was advanced by the said C. D., E. F., and G. H. jointly, on a joint account, out of money belonging to them jointly; and it was agreed that the whole of the said sum of £—, and the interest thereof, or so much of the same respectively as should remain unpaid at the death of any one or more of

them, the said C. D., E. F., and G. H., should be payable and paid to the survivors or survivor of them, or the executors or administrators of such survivor, as the said B. B. doth hereby admit and acknowledge.

(378.) And whereas the principal sum of £—, advanced to the said A. B., upon the security of the said hereinbefore in part recited mortgage, was the proper money of the said C. D., as was acknowledged by the said A. A., in his lifetime, and as the said F. G., as such executor as aforesaid, doth hereby testify and declare.

(379.) And whereas there is now due £—, and owing to the said A. B. and C. D., as such trustees and executors as aforesaid, in respect of the said hereinbefore in part recited indentures of mortgage and further charge, the principal sum of £— only, all interest for the same having been duly paid and satisfied up to the day of the date of these presents.

(380.) Whereas the principal sum of £—, secured by the within written indenture [or, by the said hereinbefore in part recited indenture,] together with the current interest for the same [or, together with an arrear of

Loan and
interest
due.

interest, amounting to the sum of £—,] is now due and owing to the said A. B., as he the said C. D. doth hereby admit and acknowledge.

Agreement
to convert
interest into
principal.

(381.) And whereas the said A. B. hath applied to and requested the said C. D. to pay the said sum of £—, so due for interest as aforesaid ; but he being unable so to do, hath proposed and agreed to charge the same as a further principal sum on the hereditament comprised in the said indenture of mortgage, in manner hereinafter mentioned.

That prin-
cipal and in-
terest exceed
the value of
mortgaged
estate.

(382.) And whereas there is now due and owing from the said A. B. to the said C. D., for principal and interest, the sum of £—, which exceeds the value of the absolute estate and inheritance of the said mortgaged premises.

Loss. *See Bill of Exchange.*

Loss of re-
lease and as-
signment.

(383.) And whereas the said hereinbefore in part recited indenture of release and assignment of the &c. hath been lost or mislaid.

No release
executed, or,
if any, lost.

(384.) And whereas upon the payment of the said sum of £— to the said A. B., no

release or sufficient discharge for the same was executed, or, if executed, the same cannot be found.

(385.) And whereas the said indenture of assignment, mentioned in the exception to the said hereinbefore in part recited indenture of release, hath been lost or mislaid, or cannot be found, nor can it be traced that any such indenture was ever executed, and unless such indenture was executed, it is considered that the estate and interest of the said A. B. was long since barred or extinguished.

Loss of assignment of term to attend.

LUNACY.

(386.) Whereas in pursuance of an order made by the Lord High Chancellor of Great Britain, bearing date on or about the &c., a commission in the nature of writ *de lunatico inquirendo* was awarded and issued, directed to certain commissioners therein named, to inquire of the lunacy of the said A. B.; and by an inquisition taken by virtue of the said writ, on or about the &c., it was found that the said A. B. was then a lunatic, and did not enjoy lucid intervals, so that he

Writ *de lunatico inquirendo*, and inquisition finding lunacy.

was not sufficient for the government of himself, his manors, messuages, lands, tenements, goods, and chattels.

Reference as to appointment of committees.

(387.) And whereas by another order made by the said Lord Chancellor, in the matter of the said lunacy, bearing date the &c., it was (amongst other things) referred to C. D. esq., one of the Masters of the High Court of Chancery, to inquire and certify who was or were the most fit and proper person or persons to be appointed the committee or committees of the person and estate of the said lunatic.

Report certifying fit persons for committees.

(388.) And whereas the said Master, by his report, bearing date the &c., made in pursuance of the said last-mentioned order, certified (amongst other things) that he was of opinion the said E. F. and G. H. were the most fit and proper persons to be appointed the committees of the person and estate of the said lunatic.

Order confirming report, and appointment of committees.

(389.) And whereas by another order, made in the same matter, bearing date the, &c., it was ordered that the said Master's said report should be confirmed; and that the custody of the person of the said lunatic, and the care and management of his estate,

should be granted to the said E. F. and G. H.; and, in pursuance of the said last-mentioned order, a grant of the custody of the person and estate of the said lunatic to the said E. F. and G. H. passed the great seal on or about the, &c.

(390.) And whereas the said A. B. is Title to lands intended to be demised. seised in fee-simple of, or otherwise absolutely entitled to, the messuages or tenements, erections, buildings, and land herein-after particularly described, and intended to be hereby demised.

(391.) And whereas by another order made in the said matter by the said Lord Chancellor, bearing date the &c., it was ordered to be referred to the said Master to inquire and certify whether it would be fit and proper, and for the benefit of the said lunatic's estate, that a lease of the said messuages or tenements, and premises, should be granted by the said E. F. and G. H. to the said B. B., and for what term, and at what rent, having regard to the said lunatic's interest therein.

(392.) And whereas the said Master, by his report, bearing date the &c., made in pursuance of the said last-mentioned order, certified (amongst other things) that it would

Report certifying expediency of lease.

be fit and proper, and for the benefit of the said lunatic's estate, that a lease of the said messuages or tenements and premises should be granted to the said B. B. for the term of twenty-one years, at the yearly rent of £—, and subject to the covenants and conditions therein mentioned, and hereinafter contained, and subject to such other covenants and conditions as the said Court might think proper to be inserted in such lease.

Order confirming report, and enabling committees to grant lease.

(393.) And whereas by another order made in the said matter by the said Lord Chancellor, bearing date the &c., the said last-mentioned report was confirmed; and it was ordered that the said E. F. and G. H., as committees of the said lunatic, should be at liberty to grant a lease of the said messuages or tenements and premises to the said B. B., upon the terms and conditions approved of by the said Master; and it was thereby referred to the said Master to settle and approve of a proper lease thereof accordingly; and it was ordered that the said E. F. and G. H., as such committees as aforesaid, should, in the name and on the behalf of the said lunatic, execute the said lease, when so settled and approved of,

upon the said B. B. executing a counterpart thereof. (a)

(394.) And whereas the said Master hath ^{Approval of lease by Master.} settled and approved of these presents, as a proper lease of the said premises, and hath signified his approval by signing his name in the margin of the first skin thereof, and his name and allowance in the margin of the last skin thereof. (b)

(a) 1 W. IV. c. 65, s. 24.

(b) In ordinary cases full Recitals of all the proceedings need not be given: it will be sufficient to refer, in the operative part of the lease, to the order of the Chancellor and the approval of the trustees thus:— “Witnesses that for and in consideration of the yearly rent hereinafter reserved, and the conditions, covenants, and agreements hereinafter contained, on the part of the said B. B., his executors, administrators, and assigns, to be paid and performed, the said A. B., by the said E. F. and G. H., as such committeees as aforesaid, by virtue of an order of the Lord Chancellor, bearing date &c., and with the approbation of Master D., to whom the matter of the said lunacy stands referred, testified by his signing his name in the margin of these presents, hath demised, &c.” The ambiguity, or supposed ambiguity, of the words “in the name and on the behalf,” has occasioned some difference of opinion as to the fittest mode of framing the draft. Some consider the form above given as the most correct; others, however, advise that the lunatic should be made to demise in his own name, and then that the

Reference to
inquire as to
the expediency of a
sale of lunatic's estate.

(395.) And whereas, by another order made by the said Lord Chancellor in the said matter, upon the petition of the said A. B. and C. D., bearing date the &c., it was ordered to be referred to the said Master to inquire whether it would be fit and proper that any, and if any, what part or parts of the real estates of the said A. B. should be sold or mortgaged, for the purpose of raising the said several sums of £— and £—, and also the costs of and attending such sale or mortgage, if any. (c)

Report of
expediency
of a sale.

(396.) And whereas the said Master, by his report, bearing date the &c., made in pursuance of the said last-mentioned order, certified (amongst other things,) that it was necessary and proper, and for the benefit of the said lunatic and his estate, that the several farms, lands, and premises therein mentioned, including the messuage and land hereinafter described, and intended to be

committee should demise "in the name and on the behalf" of the lunatic. When this plan is adopted, both the lunatic and committee are named as parties, and the committee signs his own name as well as that of the lunatic.

(c) See 1 W. IV. c. 65, s. 28.

hereby granted and released, should be sold, and that he had accordingly, as directed by the said last-mentioned order, inserted an advertisement in the London Gazette, and in several public newspapers, for the sale of the said estates before him.

(397.) And whereas, by another order made by the said Lord Chancellor in the said matter, upon the petition of the said A. B. and C. D., and bearing date the &c., the said last-mentioned report was confirmed, and it was (amongst other things,) ordered, that the freehold and leasehold estates therein mentioned, including the messuage and land hereinafter particularly mentioned and described, and intended to be hereby granted and released, with the appurtenances, should be sold, either by public auction or private contract, with the approbation of the said Master, (subject to any mortgage or mortgages thereon, or on any part thereof, in case the mortgagee or mortgagees should not concur in such sale,) to the best purchaser or purchasers that could be gotten for the same, to be allowed of by the said Master, wherein all proper parties were to join as the said Master should direct, and that the

Confirmation of report and order of sale.

committee might be at liberty, out of the purchase-money for the said premises, to pay off and discharge the sum of £—, part of the principal money due to the said L. M., as aforesaid, upon his joining in the conveyance of the said premises to the purchaser or purchasers thereof.

Sale by suc-
tion before
Master.

(398.) And whereas, in pursuance of the said last-mentioned order and advertisements, the estates therein mentioned, including the messuage and land hereinafter described, and intended to be hereby granted and released, were put up for sale before Master D. D., at the public sale-room of the High Court of Chancery, situate in Southampton Buildings, Chancery Lane, London, on Thursday the &c., at two o'clock in the afternoon, in — lots, according to certain printed particulars of sale, with certain conditions thereunto annexed, then and there produced, when several persons attended the said sale, and bid for the said premises; and the said B. B. having attended such sale, and bid the sum of £— for the premises comprised in lot —, and no other person having bid more for the same, the said B. B. was allowed to be the highest

bidder for, and purchaser of, the premises comprised in the same lot, (which includes the messuage and land hereinafter described, and intended to be hereby granted and released,) at or for the price or sum of £—.

(399.) And whereas the said Master, by ^{Report of sale.} his report, bearing date the &c., certified (amongst other things,) that he had allowed the said B. B. to be the purchaser of lot —, mentioned in the said particulars and conditions of sale, at the sum of £—, and that he had, in the schedule annexed to his report, set forth the particulars of such lot —, (a true and correct copy whereof is hereupon indorsed.)

(400.) And whereas by another order, ^{Confirmation of Master's report.} made by the said Lord Chancellor, in the said matter, upon the petition of the said A. B. and C. D., and bearing date &c., the said last-mentioned report was confirmed.

(401.) And whereas by another order, ^{Order for payment of purchase-money, and execution of conveyance.} made by the said Lord Chancellor, in the said matter, upon the petition of the said B. B., and bearing date the &c., it was ordered that the said B. B. should be at liberty to pay into the Bank, with the privity of the Accountant-General of the Court of Chan-

cery, in trust in the said matter, to an account to be intituled "The Produce of the Sale of the Real Estate," the sum of £—, being the amount of the consideration or purchase-money for the premises comprised in lot —, in the said petition mentioned, together with interest thereon, at and after the rate of £— per cent. per annum, from the &c., up to the time of payment of the said sum of £—, the amount thereof to be verified by affidavit; and it was thereby further ordered that the said sum of £—, and interest, when so paid into the Bank, should be laid out in the purchase of £3 per cent. consolidated annuities, in the name and with the privity of the Accountant-General, in trust in the said matter, to an account to be intituled "The Produce of the Real Estate;" and the said Accountant-General was to declare the trust thereof accordingly, subject to further order; and it was thereby further ordered, that the said bank annuities, when so purchased, should not be transferred or otherwise disposed of without notice to the said B. B. or Mr. D. his solicitor; and it was thereby further ordered, that, upon the said B. B. paying his said

purchase-money and interest into the Bank as aforesaid, that he should be let into possession of the premises comprised in the said lot —, and into the receipt of the rents and profits thereof, from the &c. ; and thereupon it was further ordered, that the said A. B. and C. D., the committees of the estate of the said lunatic, should forthwith execute in the place of the said lunatic, and join and concur with all other necessary parties in executing a proper conveyance and assurance of all the estate, right, title, and interest of the said lunatic, of, in, and to the premises comprised in the said lot —, unto the said B. B., his heirs, and assigns, or as he or they should direct or appoint, pursuant to the statute in such case made and provided; such last-mentioned conveyance to be settled and approved of by D. D., the Master to whom this matter stands referred, in case the parties differed about the same.

(402.) And whereas, in pursuance of the said last-mentioned order, the said B. B. did, on the &c., pay into the Bank of England, with the privity of the Accountant-General of the said Court of Chancery, in trust in the said matter, to an account to be intituled

“The Produce of the Sale of the Real Estate,” the sum of £—, being the amount of the said purchase-money of £—, with interest for the same, after the rate aforesaid, up to the time of such payment, as appears by the receipt of one of the cashiers of the said Bank, and the certificate of the said Accountant-General annexed thereto, and therewith filed in the office of the Registrar of the same court, true and correct copies whereof are hereupon indorsed.

That mort-
gagor has
become luna-
tic, but not
found such
by inquisi-
tion.

(403.) And whereas the said A. B. hath lately become of unsound mind, and in consequence thereof is totally incapable of managing his own affairs, or of executing with effect any deed or other legal instrument, but hath not been found such by inquisition. (d)

Desire to
discharge
mortgage.

(404.) And whereas the said C. D. is desirous of paying off and discharging the principal money and interest due and owing to the said A. B., upon the said recited se-

(d) See 1 W. IV. c. 60, s. 5. If the party has been found lunatic by inquisition, then, instead of this Recital, the commission of lunacy and the appointment of committees should be recited. See art. (386.) and (387,) p. 257.

curity as aforesaid, upon having a reconveyance of the said mortgaged premises duly made and executed by him.

(405.) And whereas by an order made in the matter of the said A. B., (a person of unsound mind, though not found such by inquisition,) by the Lord High Chancellor of Great Britain, upon the petition of the said C. D., and bearing date the &c., it was ordered that it should be referred to D. D., the Master in rotation, to inquire and certify whether the said A. B. was an idiot, lunatic, or of unsound mind, and incapable of managing his own affairs; and in case the said Master should find the said A. B. to be an idiot, lunatic, or of unsound mind, and incapable of managing his affairs, then he was to inquire and certify whether he was seised or possessed of the hereditaments and premises comprised in the said indentures of lease and release of the &c., or of any and what part or parts thereof, either alone or jointly with any other person or persons, and whom, as a trustee or trustees upon any and what trust or trusts, or by way of any and what mortgage, and for whom, within the intent and meaning of an act of Parliament

Reference to inquire whether mortgagor be a lunatic.

passed in the first year of the reign of his present Majesty King William the Fourth, intituled "An Act, for Amending the Law respecting Conveyances and Transfers of Estates and Funds vested in Trustees and Mortgagees, and for enabling Courts of Equity to give Effect to their Decrees and Orders in certain Cases;" and whether the said A. B. had any and what beneficial estate or interest therein; and in case the said Master should find him to be a mortgagee of the said hereditaments and premises within the intent and meaning of the said act, then he was to inquire and certify whether any thing and what was due, and ought to be paid, for principal and interest on the said mortgage; and whether the said A. B. was entitled thereto, or to any and what part thereof in his own right, and for his own benefit, or in trust for any other person or persons, and whom; and if the said Master should find the said A. B. to be entitled to the said principal and interest, or any part thereof, in his own right and for his own benefit as aforesaid, and such principal and interest, or the part thereof to which the said A. B. should be so entitled, should not

exceed £—, then the said Master was to certify who was or were the most fit and proper person or persons to be appointed on behalf of the said A. B., to receive the amount to be so found due to him; and also who was or were the most fit and proper person or persons to be appointed, in the place of the said A. B., to convey and assure, or join in conveying and assuring, the hereditaments and premises whereof he might be found to be so seised, and to whom.

(406.) And whereas the said Master, by Report and
ing mort-
gagee a
lunatic. his report, bearing date the &c., made in pursuance of the said order, certified (amongst other things,) that he found that the said A. B. was a lunatic and of unsound mind, and incapable of managing his affairs, and that he was seised of the hereditaments and premises comprised in the said indentures of lease and release, of &c., alone, and not jointly with any other person or persons, within the intent and meaning of the act of Parliament in the said order mentioned; and he found that the said A. B. was entitled to the beneficial interest in such mortgage; and he further found that there was due and

ought to be paid for principal and interest on the said mortgage the sum of £—, and that the said A. B. was entitled thereto in his own right and for his own benefit ; and the same not exceeding £— in the said order mentioned, he was of opinion that the said E. F. was the most fit and proper person to be appointed on behalf of the said A. B., he being so lunatic and of unsound mind, and incapable of managing his affairs as aforesaid, to receive the said £—, being the amount so found due as aforesaid ; and he was also of opinion that the said E. F. was the most fit and proper person to be appointed in the place of the said A. B. to convey and assure, or join in conveying and assuring, the hereditaments and premises and interest whereof he was found to be so seized, as aforesaid, to the said C. D.

Confirmation of report and nomination of person to convey.

(407.) And whereas by another order made by the said Lord Chancellor in the said matter, upon the petition of the said C. D., and bearing date the &c., it was ordered that the Master's said report should be confirmed ; and it appearing to the said Lord Chancellor, by the said report, that the said A. B. was a person of unsound mind,

and incapable of managing his affairs, and that he was seised of the hereditaments and premises comprised in the indentures of lease and release of the &c., mentioned in the said petition, by way of mortgage, within the intent and meaning of the said act of Parliament, the said Lord Chancellor thereby appointed E. F., named in the said report, in the place of the said A. B., being of unsound mind as aforesaid, upon entering into the security thereafter mentioned, to receive the principal and interest certified to be due to him in respect of the said mortgage, and to convey, assign, and assure, and the said Lord Chancellor thereby directed the said E. F., in the place of the said A. B., to convey, assign, and assure all the estate, right, title, and interest whatsoever of the said A. B. of, in, and to the hereditaments and premises mentioned and comprised in the aforesaid indentures of &c., freed and discharged of and from the principal sum of £— thereby secured, and all interest due thereon, and all claims and demands in respect thereof respectively, to the said C. D., his heirs, and assigns, or as he or they should direct or appoint, upon payment to the said

E. F. of the sum of £—, the principal and interest certified to be due by the said Master, (after deducting the costs and expenses therein and hereinafter mentioned); and it was further ordered, that such conveyance should be settled and approved by —, the Master to whom the said matter stood referred, in case the parties differed about the same: and it was referred to the said Master to settle and take such security for the due application of the said principal money and interest, by the said E. F., as he should consider proper and sufficient; and it was thereby further ordered that the said C. D. should be at liberty to retain, out of the said mortgage money and interest, his costs and expenses of and occasioned by the several petitions and orders in the said matter, and consequent thereon, (excepting the costs of the conveyancee, which were to be borne and paid by the said C. D.,) such costs and expenses to be taxed by the said Master, in case the parties differed about the same.

Balance due
on mortgage
after deduct-
ing expenses.

(408.) And whereas, after deducting the sum of £—, the amount of the costs and expenses by the said last-mentioned order

directed to be retained by the said C. D. out of the said mortgage money and interest, the sum of £— only remains due to the said A. B.

(409.) And whereas the said E. F. hath duly entered into security, to the satisfaction of the said Master, for the due application of the said sum of £— by the said E. F., in testimony whereof the said Master hath signed the certificate indorsed upon these presents.

(410.) And whereas, after the date and execution of the said hereinbefore in part recited indentures of &c., [or, within written indentures,] the said A. B. became of unsound mind, and incapable either of executing the trusts reposed in him, or of appointing a new trustee or trustees in his stead, by virtue of the powers contained in the said recited indenture of &c., [or, the within written indenture.]

(411.) And whereas, by a decree of the High Court of Chancery, pronounced by, &c., on the &c., in a cause in which the said [or, the within named] C. D. and others are plaintiffs, and the said A. B. is defendant, it was referred to the Master of the said Court

That nominee has entered into security.

That trustee became of unsound mind.

Reference to appoint new trustee.

in rotation, to appoint one or more proper person or persons to be a trustee or trustees in the place of the said A. B., under the within written indenture, for the purposes of the said indenture, or such of them as were then capable of taking effect; and to settle the proper deeds for vesting the trust estates in such new trustee so to be appointed.

Report ap-
proving of
and appoint-
ing new trus-
tee.

(412.) And whereas D. D., one of the Masters of the said Court, and who was the Master in rotation to whom the said decree was referred, did, in pursuance of such decree, make his report, bearing date the &c., and thereby certified (amongst other things,) that he approved of a proposal which had been laid before him for the appointment of a new trustee as therein mentioned, and that he therefore thereby appointed the said A. A. to be such trustee in the place of the said A. B.

Confirma-
tion of re-
port.

(413.) And whereas by an order made in the said cause, and bearing date the &c., it was ordered that the said recited report should be confirmed.

Reference to
inquire whe-
ther trustee
was lunatic.

(414.) And whereas, by an order made by the Lord High Chancellor of Great Britain in the said cause, and in the matter of

the said A. B., and bearing date the &c., it was ordered that it should be referred to the said Master, to inquire and certify whether the said A. B. was an idiot, lunatic, or of unsound mind, &c.

(415.) And whereas in pursuance of the Report finding trustee a lunatic. said last-recited order, the said Master made his report, bearing date the &c., and thereby certified that he found that the said A. B. was of unsound mind, and incapable of executing the trusts vested in him under and by virtue of the said indenture, and that he was of opinion that the said A. B. was a trustee of the hereditaments and premises, with the appurtenances, mentioned and comprised in the said indentures, within the intent and meaning of the said act of Parliament; and that the said A. B. had no beneficial interest in the said premises; and that he was also of opinion that the said A. B. was such trustee for the plaintiffs in the said cause, the said T. L. and F. S. and such other persons as were entitled to any benefit under the trusts of the said recited indentures of &c., [or, the within-written indenture;] and the said Master further certified that he was of opinion that the said A. A.

was the most fit and proper person to be appointed on the behalf, and in the name of the said A. B. to convey, surrender, release, assign, or otherwise assure the hereditaments and premises, with their appurtenances, whereof the said A. B. was such trustee aforesaid.

Confirmation of report, and direction to convey.

(416.) And whereas by an order made by the said Lord Chancellor in the said cause and matter, and bearing date the &c., now last past, it was ordered that the last recited report should be confirmed, and that the said A. B. should be discharged from the trusts of the said indentures respectively; and that the said A. A. should convey, surrender, release, and assign, or otherwise assure unto the said L. M. the hereditaments, premises, with their appurtenances so vested, or such of them as were then vested in the said A. B., under and by virtue of the same indentures, or any of them, for the purposes of such indentures, or such of those purposes as were then capable of taking effect; and that it should be referred back to the said Master to settle the proper deeds for vesting the said trust estates in the said L. M.

(417.) And whereas the said Master, in ^{Approval of conveyance by Master.} pursuance of the said lastly-recited order, hath settled these presents as a proper deed for vesting the said hereditaments and premises, with their appurtenances, in the said L. M. as such new trustee, and in testimony of his approval hath signed his allowance in the margin hereof.

(418.) And whereas letters of administration of the goods and chattels, rights and credits of the said A. B., left unadministered by the said C. D., were granted to the said E. F. during the lunacy of the said C. D. by the &c., on &c.

(419.) And whereas the said Master, by his report bearing date &c., made in pursuance of an order of the Lord Chancellor to that effect, certified that the said B. B., C. B., and D. B., and the said C. D., were the only ^{Report finding next of kin of intestate, and that lunatic administrator possessed himself of certain property.} next of kin, of the said A. B., and the said Master also reported, pursuant to the said order last referred to, that the said A. B. was, at the time of his decease, possessed of the following property and effects; (that is to say) the sum of £—, &c. &c.; and the said Master found that the said A. B. was not indebted at his death, nor was the said C. D.

then indebted; and the said Master reported that the said lunatic did, before his said lunacy, take possession of &c. and also caused the said stock and funds to be transferred into, and the same were then standing in his name, in the books of the Governor and Company of the Bank of England.

Confirmation of report, and direction to pay distributive shares.

(420.) And whereas, by a further order of the said Lord Chancellor, made in the said matter, bearing date the &c. on the joint petition of the said E. F., B. B., C. B., and D. B., it was ordered, that the said last mentioned report should be confirmed; and it was (amongst other things) further ordered, that the said E. F., as such committee as aforesaid, should be at liberty to transfer and pay the residue of the said lunatic's moiety of the several stocks, funds, annuities, and securities mentioned in the said report, and the dividends due and to become due in respect thereof, after the payment thereinbefore directed, into the Bank, in the name and with the privity of the Accountant-General of the Court of Chancery, in trust in the said matter: And it was further ordered, that, upon a proper release and indemnity, or proper releases and indemnity,

ties, to the said lunatic and his estate being given and executed (at the expense of the said lunatic's estate,) by the said B. B., C. B., and D. B. to the said E. F., as such committee as aforesaid (such release and indemnity, or releases and indemnities to be settled by the said Master,) the said committee should, as such administrator as aforesaid, pay and transfer the remaining moiety of the said stocks, funds, and securities, and the dividends due and to accrue due in respect thereof, unto the said B. B., C. B., and D. B., in equal shares and proportions.

Desire, on
receiving
distributive
share, to ex-
ecute release
and indem-
nity.

(421.) And whereas the said B. B. in consideration of his distributive share of the said intestate's bonds, stocks, funds, and securities, as aforesaid, being delivered, transferred, or paid to him, pursuant to the said last-recited order, is desirous of executing this present release and indemnity, settled and approved by the said Master, testified by his signature of approbation in the margin hereof, pursuant to the same order, and the said B. B. hath also concurrently executed a receipt, duly stamped, for his said distributive share, as required by the statute in that behalf.

MARRIAGE. *See Separation.*

That marriage hath been agreed upon.

(422.) Whereas a marriage hath been agreed upon, and is intended shortly to be solemnized, between the said A. B. and C. D.

Solemnization of marriage.

(423.) Whereas a marriage was duly solemnized between the said A. B. and C. D., in the parish church of A., in the county of B., on or about the — day of —.

Intermarriage and coverture.

(424.) Whereas the said C. D. hath lately intermarried with, and is now the wife of, the said A. B.

Reference to Master to inquire whether proposed marriage of ward was suitable.

(425.) And whereas the said A. B. having lately made proposals of marriage to the said C. D., she and her said mother applied to the said Court of Chancery, by petition in the said cause, and thereby prayed that it might be referred to the Master to consider whether the proposed marriage was a fit and suitable marriage for her; whereupon, by an order made in the said cause, bearing date &c., it was ordered that it should be referred to —, one of the Masters of the said Court, to consider whether the said proposed marriage was a proper marriage for the said C. D., and if the same should appear to be a proper marriage, then it was ordered that

the said A. B. should be at liberty to lay proposals before the master for a settlement or provision for the said C. D., and the issue of the said marriage; and the said Master was to state the same, with his opinion thereon to the said Court, and thereupon such further order should be made as should be just.

(426.) And whereas in pursuance of the said order, the said Master made his report bearing date &c., and thereby certified that the fortune of the said C. D. consisted of the particulars in his report, and hereinbefore mentioned, and the said master, having considered the evidence laid before him as to the character and circumstances of the said A. B., was of opinion that the said marriage was a proper marriage for the said C. D.; and the said Master further certified that the said A. B. had, in pursuance of the liberty given to him by the said orders, laid proposals before him for a settlement, to be made previous to such marriage, whereby he proposed that the share of the said C. D., vested or contingent, in the said funds, property and effects, should be assigned to the said

Report in
favour of
proposed
marriage,
stating pro-
posals for
settlement.

trustees, in trust to raise and pay the costs and expenses of preparing the said settlement, and of the application to the said Court, and otherwise relating thereto; and then in trust to raise the sum of £—, for the said C. D. for her immediate use; and subject thereto, to discontinue the said sums, funds, and effects in their present securities, or to place them in any other government funds or real securities, and to pay the dividends and interest to the said C. D. for her separate use for her life, and after her decease to pay the interest and dividends thereof to the said A. B. for his life, if he died surviving his intended wife, and at the death of the survivor to pay and divide the said principal monies unto and between the issue of the said intended marriage, in such shares as the parents should jointly by deed, or as the survivor should by deed or will direct or appoint, and in default of appointment, then equally between their children, if more than one, and if only one, then wholly to that child, the shares of sons to vest at twenty-one, and of daughters at twenty-one or marriage, with a proviso for

the dividends to be applied for maintenance during minority, and that the said trustees should have power to apply parts of the shares of sons (not exceeding a moiety) for their advancement in the world, though their shares should not have vested; and if there should not be any issue of the said marriage, or being such, if all should die without any of them attaining a vested interest, the whole property to belong to the said C. D. in the event of her surviving her intended husband, and in case of his surviving her, then one moiety of the principal to belong to him at his wife's decease, and the interest of the other moiety for his life; and, at his death, the said other moiety to go to the next of kin of the said C. D., in the same way as if she had died unmarried and intestate, and that the settlement should contain all other usual clauses contained in settlements of the like nature; and the said Master certified that he had considered the said proposals, and was of opinion that a settlement made pursuant thereto, would be a proper settlement on the said C. D. the infant, and the issue of the said intended marriage.

MERGER. *See Surrender, Terms for Years.*

Intention to merge term. (427.) And whereas it is intended that the said term of — years, created by the said hereinbefore in part recited lease of the &c., shall be merged and extinguished.

Agreement to merge term, if not already merged. (428.) And whereas it is apprehended that the said term of — years, created by the said hereinbefore in part recited indenture of the &c., is merged by reason of the assignment of the same term to the said A. B. and its union with the freehold and inheritance of the said messuages, lands, and other hereditaments, comprised in the said term; but, in order to put an end to any doubts as to the merger of the said term, it hath been agreed that, unless the same is already extinguished, it shall be extinguished by the force and operation of these presents.

Agreement to merge term in order to discharge estate from portions. (429.) And whereas in order to enable them to carry the aforesaid contracts for sale into execution, the said A. B. and C. D. are desirous that the said term of — years should be merged in the inheritance of the said premises, so agreed to be sold, in order that the same may be discharged from the

portions to be raised under the same term; and the said E. F. and G. H., being satisfied that the said estates in the said county of D. are of more than sufficient value to answer the said portions, have agreed to surrender the said term to the extent aforesaid, and to release the said estates so to be sold from the aforesaid portions.

(430.) And by the said indenture now in ^{Merger of term.} recital, for the considerations therein expressed, the said A. B. did surrender unto the said C. D. and his assigns, the said lands and other hereditaments, and all other the premises comprised in the said term of — years, with their and every of their appurte- nances, to hold the same unto the said C. D. and his assigns for all the residue then to come of the said term of — years, to the intent that the residue of the said term might merge and be extinguished in the reversion and freehold of the said hereditaments, and that the same might be absolutely freed and discharged from the said annuity of £—, and the trusts of the said term of — years.

(431.) And whereas, under the circum- ^{That under stances of the title, term} stances of the title, the said term of — years did not, by virtue of the said hereinbefore in ^{title, term did not merge.}

part recited indenture of the &c., merge in the freehold and inheritance of the hereditaments comprised therein; but is now a subsisting interest in the said A. B.

MINORITY. *See Age.*

MORTGAGE. *See Infant, Loan, Lunacy, Payment, &c.*

Mortgage of
freeholds
and assign-
ment of
term.

(432.) And whereas by indenture of lease and release bearing date, respectively, the &c., and made or expressed to be made between A. B. of the first part, the said C. D. of the second part, E. F. of the third part, and the said G. H. of the fourth part, in consideration of the sum of £— to the said A. B. paid by the said C. D., all and singular the messuages and other hereditaments hereinafter particularly mentioned, and intended to be hereby released, with the appurtenances, were [together with divers other hereditaments,] conveyed and limited, subject to the term of — years, to the use of the said C. D., his heirs, and assigns for ever; subject, nevertheless, to a proviso or condi-

tion in the indenture now in recital contained for redemption of the same premises, on payment by the said A. B., his heirs, executors, or administrators, to the said C. D. his executors, administrators, or assigns, of the sum of £—, with interest for the same, after the rate, on or at the days or times, and in the manner therein mentioned and appointed for payment of the same respectively.

And by the indenture now in recital, the same messuages and premises with their appurtenances were, for the consideration therein mentioned, conveyed and assigned unto the said G. H., his executors, administrators, and assigns for the residue then to come and unexpired of the said term of — years; upon trust for the more effectually securing the repayment of the said sum of £— and interest at the times and in manner aforesaid; and subject thereto, upon trust, for the person or persons for the time being, entitled to the freehold and inheritance of the said premises, and to be assigned and disposed of as he or they should, from time to time, direct or appoint, and in the mean time to attend and wait upon the freehold

and inheritance of the same premises, in order to protect the same from all mesne incumbrances, if any such there were.

Mortgage of freeholds with trusts for sale. (433.) And whereas by indentures of lease and appointment and release, the lease bearing date the day next before the day of the date of the said indenture of appointment and release, and the appointment and release bearing even date with these presents, and made or expressed to be made between A. B. of the one part, and C. D. of the other part, in consideration of the sum of £— to the said A. B., paid by the said C. D., all, &c. were conveyed and limited unto and to the use of the said C. D. and his heirs, upon certain trusts therein mentioned, and declared for securing to him the said C. D., his executors, administrators, and assigns, the repayment of the said sum of £—, with interest for the same, after the rate on or at the days or times, and in manner therein mentioned and appointed for payment of the same respectively.

Mortgage of freeholds in consideration of transfer of stock. (434.) And whereas by indentures of lease and release, bearing date respectively the &c., the release being made or expressed to

be made between the said A. B. of the one part, and the said C. D. of the other part, in consideration of the sum of £— three per cent. reduced Bank Annuities transferred by the said C. D. into the name of the said A. B., in the books of the Governor and Company of the Bank of England, kept for entering transfers of such stock, the messuages, lands, and other hereditaments hereinafter particularly mentioned, and intended to be hereby appointed and released, with their appurtenances, were conveyed and limited unto and to the use of the said C. D., his heirs and assigns for ever; subject nevertheless to a proviso or condition in the said indenture now in recital contained, for redemption of the same premises, on the re-transfer by the said A. B., his heirs, executors, administrators, or assigns, into the name or names of the said C. D., his executors, administrators, or assigns, of the said sum of £— three per cent. reduced Bank Annuities on the &c., then next ensuing, and on payment, in the meantime, of such sums of money by way of interest, as would have been payable for dividends upon the said sum of £— if the said

C. D. had not transferred the same as aforesaid. (a)

Mortgage of
freeholds for
a term, and,
subject
thereto, a re-
settlement of
the estate.

(435.) And whereas by indentures of lease and release, bearing date respectively the &c., the lease being made, or expressed to be made, between &c., in consideration of the sum of £— to the said A. B. paid by the said C. D., as therein is mentioned, and of the further sum of £— to the said A. B. secured to be paid by the said C. D., as therein also is mentioned, the messuages, lands, and other hereditaments hereinafter particularly described, with their appurtenances, were, (together with divers other hereditaments,) conveyed and limited to the use of the said C. D., his executors, administrators, and assigns, for the term of — years, subject nevertheless to a proviso or condition in the said indenture now in recital contained, for redemption of the same premises, upon payment by the said A. B., his heirs, executors,

(a) As to mortgages of this kind, see *Forrest v. Elkes*, 4 Ves. 492; *Tate v. Wellings*, 3 T. R. 531; 3 B. & C. 278; and see *Barnard v. Young*, 17 Ves. 44; *White v. Wright*, 3 B. & C. 276, S. C. 5 D. & R. 110.

or administrators, unto the said C. D., his executors, administrators, or assigns, of the sum of £—, with interest for the same, after the rate, on or at the days or times, and in manner therein mentioned and appointed for payment of the same respectively; and after the determination of the said term of — years, and in the mean time subject thereto, to such uses &c. [See tit. “*Uses.*”]

(436.) And whereas by an indenture bearing date on or about &c., and made or expressed to be made between the said A. B., of the one part, and the said C. D. of the other part, in consideration of the sum of £— to the said A. B. paid by the said C. D., in manner therein mentioned, all and singular the manors, messuages, lands, hereditaments, and premises comprised in and demised by the said hereinbefore in part recited indenture of lease, with their appurtenances, were transferred and assigned unto the said C. D., his executors, administrators, and assigns, from the day of the date of the indenture now in recital, for and during all the residue and remainder of the said term of — years, in and by the said indenture of lease granted, then to come and unexpired, subject, never-

Mortgage of
leasehold,
subject to
rent and co-
venants.

theless, to the payment of the rent thereby reserved, and to the performance of the covenants in the said indenture of lease contained, and on the part and behalf of the tenant or lessee to be observed and performed; and subject also to the proviso or condition, in the said indenture now in recital contained, for redemption of the same premises, upon payment by the said A. B., his heirs, executors, or administrators, unto the said C. D., his executors, administrators, or assigns, of the said sum of £—, together with interest for the same, after the rate of £— per cent. per annum, at the respective times and in manner therein mentioned and appointed for payment of the same respectively.

Further
charge.

(437.) And whereas by an indenture of further charge, bearing date the &c., and made or expressed to be made between the said A. B. of the one part, and the said C. D. of the other part, it is witnessed that in consideration of the said sum of £—, being then due and owing to the said C. D., by virtue of the said lastly hereinbefore recited indenture, and also in consideration of the further sum of £—, then advanced by the said C. D.

to the said A. B., he, the said A. B., did thereby covenant with the said C. D., his executors, administrators, and assigns, that all and singular the messuages, lands, and other hereditaments comprised in the said indenture of &c., should stand charged as well with the payment of the sum of £—, as of the said sum of £—, with interest for the same sums respectively, and that the said hereditaments should not be redeemable until the payment of the said several sums of £— and £—, and interest for the same respectively.

(438.) And whereas by a deed poll or instrument in writing, bearing date on or about the &c., under the hand and seal of the said A. B., and indorsed on the said hereinbefore in part recited indenture of release of the &c., all and singular the messuages, lands, and other hereditaments in the said indenture of release comprised, became chargeable with the repayment of the sum of £— with interest to the said C. D., his executors, administrators, or assigns.

(439.) Subject nevertheless to a proviso or condition in the indenture now in recital contained, for redemption of the same premises on payment by the said A. B., his

*Id. Another
(short form.)*

*Proviso for
redemption,
and for re-
duction of
interest if
regularly
paid.*

heirs, executors, or administrators, unto the said C. D., his executors, administrators, or assigns, of the said sum of £—, with interest for the same, after the rate of £—, per cent. per annum, on or at the days or times, and in manner therein mentioned and appointed for payment of the same respectively, with a provision for reducing the interest to £— per cent. per annum, if paid at the times and in manner thereby appointed.

Equitable security.

(440.) And whereas the messuages, tenements, and other hereditaments comprised in and conveyed by the said hereinbefore in part recited indentures of &c., stand subject to, and are charged and chargeable with, the payment of the sum of £—, and interest to A. B., of &c.; and the said recited indentures have been deposited with the said A. B. as an equitable security for the same.

Equitable security, and agreement to execute legal mortgage.

(441.) And whereas the said A. B., being indebted to the said C. D. in the sum of £—, did on or about the &c., deposit the said hereinbefore recited indentures with the said C. D., as an equitable security for the same debt, and at the same time agreed to make and execute unto the said C. D., his executors, administrators, and assigns, such legal

Conveyance or mortgage of the said messuages, lands, and other hereditaments comprised in the same indentures, as the said **C. D.**, his executors, administrators, or assigns, should at any time thereafter require, for better securing the said hereinbefore mentioned debt: And whereas the said **C. D.** hath requested the said **A. B.**, to make and execute the conveyance and assurance hereinafter contained, which he hath agreed to do.

(442.) And whereas by an indenture bearing date on or about the &c., and made, or expressed to be made, between the said **A. B.** of the first part, the said **C. D.** of the second part, and the said **E. F.** of the third part, in consideration of the sum of £—, to the said **A. B.** paid by the said **E. F.**, the said **A. B.** did bargain, sell, assign, transfer, and set over, unto the said **E. F.**, his executors, administrators, and assigns, all that the said principal sum of £—, secured by the hereinbefore in part recited indenture of mortgage, together with all and every other sum and sums of money which then were or thereafter should or might grow, or become due and owing, for or in respect of the said

Transfer of
mortgage.

sum of £—, and all securities for the same to hold, receive, and take the same unto and by the said E. F., his executors, administrators, and assigns, for his and their own use and benefit. And for the considerations aforesaid, the said A. B. did bargain, sell, assign, transfer, and set over, and the said C. D., for the considerations therein mentioned, did bargain, sell, assign, ratify, and confirm, unto the said E. F., his executors, administrators, and assigns, all the premises comprised in and demised by the said hereinbefore in part recited indenture of lease, with their appurtenances: to hold the same unto the said E. F., his executors, administrators, and assigns, from thenceforth for and during all the residue and remainder of the said term of — years, in and by the said hereinbefore in part recited indenture of lease granted, subject nevertheless (b) to such equity or right of redemption as the same premises were then subject or liable to,

(b) If a new proviso for redemption was introduced, then say, "free from the proviso contained in the said indenture of &c., but subject nevertheless to the proviso or condition, in the indenture now in recital contained, &c." See art. (432,) p. 288.

nder or by virtue of the said hereinbefore
part recited indenture of mortgage, and of
the proviso for that purpose therein con-
tained. [or, if a mortgage of the fee, And
or the considerations aforesaid, the said
A. B., at the request and by the direction and
appointment of the said C. D., did bargain,
sell, and release, unto the said E. F. and his
heirs, all the said manors, messuages, lands,
and premises, mentioned and comprised in
the hereinbefore in part recited indenture
of the &c., with their and every of their
rights, members, and appurtenances: to hold
the same unto and to the use of the said
E. F., his heirs and assigns; subject never-
theless to such equity or right of redemption
as the said premises were subject and liable
to, under or by virtue of the said hereinbe-
fore in part recited indentures of the &c.,
and of the proviso for that purpose therein
contained.]

(443.) And whereas the principal sum of That loan
was the pro-
per money
of testator. £—, advanced to the said A. B. upon the
security of the said hereinbefore in part re-
cited mortgage, was the proper money of the
said C. D., as was acknowledged by the said
E. F. in his lifetime, and as the said G. H.

as such executor as aforesaid, doth hereby testify and declare. [See tit. "Account," art. (9,) p. 57.]

Default in payment of loan, upon which mortgage entered into possession.

(444.) And whereas the said principal sum and interest not having been repaid according to the provisions of the said indenture of mortgage, the said A. B. hath entered upon, and is now in possession of, the said mortgaged hereditaments, and in receipt of the rents and profits thereof, and, as nearly as the said C. D. can ascertain, there remains due for principal money and interest, upon the same mortgage, the sum of £—. [See tit. "Account," art. (10,) p. 58.]

Agreement to discharge mortgaged estate from debt.

(445.) And whereas the said A. B. hath agreed to exonerate and discharge all and singular the said messuages or tenements, lands, and other hereditaments hereinafter released, or expressed and intended so to be, of and from the principal money and interest due upon or by virtue of the said hereinbefore in part recited mortgage of the, &c.

Agreement to discharge part of mortgaged estate from debt.

(446.) And whereas the said A. B. hath agreed to exonerate and discharge from the said mortgage debt of £—, and from all interest due, or to become due, in respect of the same, such of the said freehold and lease-

hold premises as are in the said ground-plan respectively coloured yellow and blue; but without releasing or exonerating any part of the said mortgage debt, or any other of the securities for the same; and also upon condition that the said freehold and leasehold messuages and premises, so to be conveyed and assigned to the said C. D. as aforesaid, should be charged with and made subject to the payment of the said sum of £—, together with interest for the same, after the rate, on or at the days or times, and in manner mentioned and appointed, as aforesaid, for payment of the same respectively.

(447.) And whereas the said A. B. and C. D., being satisfied that the other hereditaments comprised in the said term of — years are an ample security for the said sum of £—, have agreed that the said term, so far as it respects the messuage and land agreed to be purchased by the said E. F., shall be surrendered by the said A. B. and C. D., to the intent that the same term may be merged and extinguished, and that the last mentioned premises may be discharged from the said sum of £— and interest.

Loan and interest due and owing.

(448.) And whereas there is now due and owing to the said A. B., upon the said hereinbefore in part recited mortgage or security, the principal sum of £—, together with an arrear of interest thereon, amounting to the sum of £—, making together the aggregate sum of £—.

Loan due and owing.

(449.) And whereas there is now due and owing to the said A. B., in respect of the said hereinbefore in part recited indentures of mortgage, the principal sum of £— only, all interest for the same having been duly paid and satisfied up to the day of the date of these presents.

Expediency of consolidating certain mortgages, and of discharging others; but which cannot be effected without the aid of Parliament.

(450.) And whereas it will be greatly for the advantage of the said A. B. and C. D., and the other persons who are now, or may hereafter become, beneficially interested in the manors, hereditaments, and premises devised and settled by the said will of the said testator B. B., that the trustees thereof should be authorised to mortgage the said manors, hereditaments, and premises, for the purpose of effecting a transfer and consolidation of the mortgages in the first schedule to this bill annexed, more particularly mentioned and described, now affecting the

same ; and also to sell such parts of the said manors, hereditaments, and premises, as are comprised and contained in the second schedule to this bill annexed, for the purpose of discharging the incumbrances affecting the same, in manner hereinafter mentioned ; but by reason of the limitations contained in the will of the said testator B. B., these objects cannot be effected without the aid and authority of Parliament.

NATURALIZATION.

(451.) And whereas the said A. B. was naturalized by an act of Parliament, which received the royal assent on or about the &c. (c)

(c) Naturalization can be effected only by act of Parliament; but a person may be made a denizen (or idenized, as Lord Bacon expresses it,) by the King's letters patent. A denizen, it is said, is privileged *a parte post*; one naturalized, *a parte ante*. See Lord Bacon's Works, vol. 5. p. 118: Co. Litt. 8, 129 a; 7 Rep. 6 a; Com. Dig. tit. "Alien," (B. 2), (C.), (D.); Vin. Abr. tit. "Alien," (B.); Bac. Abr. tit. "Alien," (D.)

Strictly speaking, however, one naturalized is not

ORDER OF COURT. *See Sust.*

PARCELS.

Identity of
parcels, and
desire of con-
veyance by
modern de-
scription.

(452.) And whereas the said A. B. hath satisfied himself that the messuages, lands, and hereditaments hereinafter described and intended to be hereby released, with the appurtenances, are part of the hereditaments comprised in the said hereinbefore in part recited indentures of the &c.; and hath requested that the same may be conveyed by the description hereinafter contained, being the present or modern description thereof. (d)

privileged *a parte ante*; for if an alien having acquired land dispose of it before he is naturalized, the title of the purchaser will not be legalized by the act of naturalization, unless there is an express provision for that purpose. (*Fish v. Klein*, 2 Meriv. 431.) Mr. Preston seems to think that one naturalized could not even *hold* lands purchased before naturalization, unless the act expressly provide for the case. *Touch. 235, Mr. Preston's ed.*

(d) In describing the parcels, or subject-matter of conveyance, two things must be carefully attended to. First, that the description is sufficiently comprehensive; and secondly, that it corresponds in the main with the description in former deeds, so that no doubt as to identity can arise. The parcels may be described either in the recitals, or in schedules, or in the operative

(453.) And whereas the greater part of ^{Confusion of boundaries.} the said messuages and lands are copyhold of the manor of A., and the residue of the same messuages and lands are of freehold tenure, but the freehold parts of the said messuages and lands cannot, by reason of a confusion of boundaries, be distinguished from the copyhold parts of the same messuages and lands. (e)

part of the deed, which last is the most usual way. Whenever the property is at all complicated a map should be used. “ ‘ Give me,’ ” said Archimedes, “ ‘ give me but another place to stand upon, and I will give motion to the earth.’ ” “ ‘ Give me,’ ” said Bentham, “ ‘ give me but a map to point to, and I will give rest and quiet to all that inherit this our portion of the earth’s surface.’ ” Third Rep. of the Real Prop. Com. App. 49. On the subject alluded to in this note, see Touch 77, 94, 246; Mr. Preston’s ed., and 2 Prest. Conv. 446.

(e) In some counties, particularly in Norfolk and Suffolk, it is extremely difficult to distinguish what is and what is not copyhold; and where allotments have been made in respect of freehold and copyhold, without distinguishing which portion of the allotments was for one, and which for the other, and without distinguishing the different manors, the titles become involved in the greatest possible confusion. In a case of this kind it was suggested, on behalf of the vendors, that all the lords of the manors would agree that so much

That parcels from their locality are a desirable purchase for the King.

(454.) And whereas the messuages and other hereditaments hereinafter particularly mentioned and intended to be hereby granted, bargained, and sold, are the same hereditaments which were given and bequeathed by the will of the said A. A. to the said A. B. and C. D. as aforesaid, and are situate and lying contiguous to His Majesty's castle of Windsor, and it is desirable that the same should be purchased for and on the behalf of His Majesty, his heirs, and successors, as and for an appendage to the said castle, [See art. (205,) p. 168.]

Acreage.

(455.) And whereas the pieces or parcels of land and other hereditaments hereinafter particularly described, and intended to be

should be considered copyhold of one manor, and so much of another; to which it was objected, that it was not possible for lords of manors to *create* copyhold, and that if they happened to mistake between the copyhold and the freehold it would occasion great perplexity. At last the difficulty was got rid of by an act of Parliament, authorizing commissioners to set out what was freehold and what was copyhold, and enacting that what was declared by the commissioners to be copyhold of the manor of A., should be held as copyhold of that manor, and so with respect to the rest. See First Real Prop. Rep. App. 272.

hereby granted and released, contain by ad-
measurement &c.

(456.) Whereas there are within the manor <sup>Commons and com-
monable rights.</sup> of A., in the parish of B., in the county of C., certain commons or parcels of waste ground, containing by estimation — acres, or thereabouts, upon which the owners or proprietors of houses, lands, tenements, and hereditaments, within the said manor and parish are, in right thereof, entitled to common of pasture for all their commonable cattle, levant and couchant, upon their said respective tenements.

(457.) Whereas there are within the manor <sup>Commons and inclo-
sures.</sup> of C., within the parish of B., in the county of W., several open and common fields, common downs, common woods, meadows, pastures, and other commonable and waste lands, and also several inclosed lands and grounds, containing altogether — acres or thereabouts.

(458.) And whereas since the execution <sup>Erection of
buildings
since con-
veyance.</sup> of the said hereinbefore in part recited indenture, the said A. B. hath erected and built upon the said piece or parcel of ground therein comprised, divers messuages or tenements, with suitable offices and outbuildings.

PARTITION.

Agreement for partition. (459.) And whereas the said A. B. and C. D. on or about the &c., agreed upon an actual division, partition, or separation of such of the messuages, lands, and other hereditaments comprised in the said hereinbefore in part recited indenture of release of the &c., as are comprised in the first schedule hereunder written, or hereunto annexed, and that the same should be held and enjoyed by them and their respective heirs, appointees, and assigns, in the parts, shares, and proportions, and in manner hereinafter mentioned.

Division of premises ; and agreement to pay sum of money for owesty.

(460.) And whereas for the purpose of the said partition, the said hereditaments and premises, so agreed to be partitioned, were divided into two lots or compartments ; and it was further agreed that such of the said hereditaments and premises as are mentioned and comprised in the first and second parts of the second schedule hereunder written, or hereunto annexed, should be considered as lot A., and should be the part or share of the said A. B., and should be enjoyed by him, his heirs, and assigns, in

severalty; and that such of the said hereditaments and premises as are mentioned and comprised in the third part of the said second schedule should be considered as lot **B.**, and should be the part or share of the said **C. D.**, and should be enjoyed by him, his heirs and assigns, in severalty; and it was thereby further agreed that the said **A. B.** should pay to the said **C. D.** the sum of £—, in order that their respective shares or allotments might be of equal value.

(461.) And whereas for the purpose of ^{Id. Another} _{form.} the said partition, the said messuages, lands, and hereditaments have been divided into two lots or compartments; and it hath been agreed that such of the said messuages, lands, tenements, and other hereditaments as are described and comprised in the first lot contained in the schedule hereunder written, or hereunto annexed, should be the part or share of the said **A. B.**, and should be enjoyed by him, his heirs, and assigns, in severalty; and for that purpose should be conveyed and limited to the uses hereafter mentioned and declared of or concerning the same; and that such of the said messuages, lands, tenements, and other hereditaments,

as are described and comprised in the second lot contained in the schedule hereunder written, or hereunto annexed, should be the part or share of the said C. D., and should be enjoyed by him, his heirs, and assigns, in severalty; and for that purpose should be conveyed, limited, and covenanted to be surrendered, to the uses hereinafter particularly mentioned or declared of or concerning the same.

Agreement
for partition,
and allot-
ments ac-
cordingly.

(462.) And whereas the said A. B. and C. D. have agreed to make a partition and division of the said lands and hereditaments so conveyed to them by the said hereinbefore in part recited indentures of lease and release, as aforesaid, except the rents and tithes hereinafter mentioned; and have also agreed that such rents and tithes shall henceforward be held by them, the said A. B. and C. D., their heirs, and assigns, as tenants in common; and, for the purpose of effectuating such agreements, have proposed to release and convey the said several hereditaments unto the said E. F. and his heirs, to the uses, &c., hereinafter mentioned. And whereas the several hereditaments, mentioned and comprised in the schedule (A) hereunder

written, or hereunto annexed, have been allotted and appropriated unto the said A. B. as the part, share, and proportion to be taken by him in severalty, of the said lands and other hereditaments so agreed to be parted and divided as aforesaid. And whereas the several hereditaments mentioned and comprised in the schedule (B) hereunder written or hereunto annexed, have been allotted and appropriated unto the said C. D., as the part, share, and proportion to be taken by him in severalty, of the said lands and other hereditaments so agreed to be parted and divided as foresaid: and for equality of such partition or division it hath been agreed that the said A. B. shall pay unto the said C. D. the sum of £—, and that the said C. D. shall pay unto the said A. B. the sum of £—.

(463.) And whereas by articles of agreement, under the hands and seals of the said A. B. and C. his wife, E. F., and G. H., bearing date on or about the &c., the said A. B., E. F., and G. H., did respectively covenant and agree to divide and make partition, in such manner as therein specified, of divers messuages, farms, lands, and hereditaments therein mentioned to have been devised to

Articles of
agreement
for partition,
but no con-
veyances
executed.

them the said C. D., E. F., and G. H., by the will and codicil of the said A. A., including the hereditaments comprised in the said in part recited indenture of, &c.; and the said hereditaments were, by the said articles of agreement, declared to be the sole property of the said G. H., as part of his share of the said messuages, farms, lands, and hereditaments, whereof partition was thereby agreed to be made. And whereas the said G. H. hath ever since been in possession of the hereditaments comprised in the said indenture of &c., pursuant to the said articles of agreement; but no conveyances have yet been executed carrying the said partition into complete effect.

Decree directing commission of partition to issue.

(464.) And whereas by a decree of His Majesty's High Court of Chancery, bearing date the &c., made in a cause wherein the said A. B. was plaintiff, and the said C. D. and E. F. were defendants, whereby, after reciting in the said decree the several matters and things hereinbefore recited, it was ordered and decreed, that a Commission of Partition should issue, directed to certain Commissioners to be therein named, to di-

vide the estates in question in the cause (being the estates so devised by the said will and codicil of the said M. B., deceased, as aforesaid) into moieties, and that one moiety thereof should be allotted as the share of the plaintiff, and the other moiety should be allotted as the share of the defendants, subject to the trusts, limitations, and remainders declared concerning such moieties; and it was ordered that the plaintiff and the said defendants should hold and enjoy their respective moieties in severalty, according to such allotments, and that all deeds and writings relating to the said estates should be produced before the said commissioners upon oath, as they should direct, who were to be at liberty to examine witnesses upon oath, and to take their depositions in writing, and return the same with the said commission; and it was ordered that the mutual conveyances to be made by the plaintiff and the said defendants to each other should be respite until the defendant C. D. should attain the age of twenty-one years.

(465.) And whereas a commission of partition, bearing date the &c., issued according to the said decree, authorizing A. A.,

Commission
of partition

B. B., C. C., and D. D., any three or two of them, to divide and allot the estates and premises in question in the said cause, devised by the said will and codicil of the said M. B., deceased, and with an express command to make a fair partition, division, and allotment thereof, and to separate and divide the same into moieties, and to allot one moiety thereof as the share of the said plaintiff, the said A. B., and the other moiety as the share of the said defendants, the said C. D. and E. F., according to the true intent and meaning of the said decree.

*Certificate of
Commiss-
sioners.*

(466.) And whereas by a certificate, bearing date the &c., under the hands and seals of A. A., of &c., and B. B., of &c., two of the said commissioners named in the said commission of partition, whereby, after reciting the said decree, dated the &c., and the said commission, dated the &c., they, the said commissioners, did certify that they had surveyed the estates and premises in question, and informed themselves of such particulars as the circumstances had appeared to them to require, without finding it necessary to resort to examination of witnesses, and according to the best of their skill and

judgment had made a fair partition, division, and allotment of the said estates and premises, and separated and divided the same into two moieties, as nearly as they had deemed practicable, and did thereby allot the entirety of all those several closes, pieces, or parcels of arable, meadow, or pasture land situate, lying, and being in the &c., called or commonly known by the several names, and containing by survey the respective quantities hereinafter mentioned; (that is to say,) &c., with the appurtenances, as the share of the said plaintiff, the said A. B., which said share of the said plaintiff, the said A. B., they, the said commissioners, had caused to be coloured green on the plan indorsed on the certificate now in recital; and they did thereby allot the entirety of all those several closes, pieces, or parcels of arable, meadow, or pasture land, also situate, lying, and being in &c., called or commonly known by the several names, and containing by estimation the respective quantities hereinafter mentioned, (that is to say,) &c., with the appurtenances, as the share of the said defendants, the said C. D. and E. F., according to the true intent and

meaning of the said decree, and which said share of the last-mentioned defendants they had caused to be coloured red on the said plan on the certificate now in recital indorsed.

Order con-
firming cer-
tificate.

(467.) And whereas by an order, bearing date the &c., made by &c., in the said cause, upon producing the certificate, dated the &c., made by the said A. A. and B. B., two of the commissioners appointed in pursuance of the said recited decree, it was ordered that the said certificate, and all the matters and things therein contained, should stand ratified and confirmed, and be observed and performed by all parties, according to the tenor and true meaning thereof.

Expediency
of com-
pleting par-
tition, but
that the same
cannot be
done without
the aid of
Parliament.

(468.) And whereas it would be advantageous, as well to the said A. B., as to the defendants in the said cause, if the partition so made by the said A. A. and B. B., as aforesaid, were completed and carried into legal effect, and made binding for ever hereafter on all parties claiming under the said recited will and codicil, or either of them, or under the said recited indentures, partition, and decree, or any of them; but by reason of the limitations contained in the

said will and codicil of the said M. B., deceased, so far as regards the undivided moiety of the said C. D., the same partition cannot be satisfactorily and effectually made permanent and perpetual, without the aid and authority of Parliament.

PARTNERSHIP.

(469.) Whereas the said A. B. and C. D. ^{Agreement to become partners.} have mutually agreed to become partners in the trade or business of, &c., for the term, and subject to the powers, provisoos, conditions, covenants, and agreements herein-after mentioned and contained.

(470.) Whereas the said A. B. and C. D. ^{Copartnership.} are copartners, carrying on the trade or business of, &c., in the names or under the firm of, &c.

(471.) Whereas the said A. B. and C. D. ^{Id. Another form.} have for some time past carried on the trade or business of —, in the shares and proportions following, (that is to say,) &c., upon the terms and conditions, and under and subject to the covenants and agreements

contained in a certain indenture, bearing date &c., and made between, &c.

Intention to become co-partners; capital to be advanced by one partner only, who is to be indemnified from losses.

(472.) Whereas the above named A. B. is about to enter into copartnership with C. D., of &c., in the trade or business of &c., under the terms of certain articles of partnership made and entered into by them, and bearing even date with the above-written bond or obligation. And whereas the capital or sum of £— which is to be brought in and advanced for the purposes of the said joint trade, pursuant to the same articles, will be wholly advanced by the said A. B., and no part of the same is for the present to be brought in by the said C. D., and the said A. B. will consequently be a creditor upon the said copartnership for the said sum of £—, and in the event of any deficiency in the partnership effects, will be subject to much greater losses than if the said capital or sum of £— had been advanced and brought in by the said A. B. and C. D. in equal proportions: and upon the treaty for the said copartnership it was agreed that the above bounden E. F. and G. H., as the sureties and on the behalf of

the said C. D. should indemnify the said A. B. from all losses to be sustained by him, by reason of his having advanced more than one moiety of the said capital or sum £—, or by reason of any breach or non-performance by the said C. D. of all or any of the covenants and agreements contained in the said articles of copartnership.

(473.) And whereas the said A. B. is desirous and hath determined to retire from the said copartnership, and hath, with the privity and consent of the said C. D., contracted with E. F. of &c., for the sale to him of all the share and interest of the said A. B., in the copartnership stock and effects and the book debts now due and owing to the said A. B. and C. D., as such copartners as aforesaid, or which shall at any time hereafter become due and owing, or payable to them, by reason or on account of any dealings or transactions of the said copartnership during the subsistence thereof: and the said E. F. is forthwith to be taken into copartnership with the said C. D. in the said trade or business of &c., upon the terms of certain articles of copartnership to be made and entered into accordingly.

That one partner intends to retire, and, with the consent of the others, hath contracted for the sale of his interest.

Id. Another form. (474.) Whereas the said A. B. hath for some time past carried on the trade or business of &c., at &c., and being desirous of retiring from the said business, hath agreed with the said C. D. to relinquish the same in his favour, upon the terms hereinafter expressed.

Agreement to dissolve copartnership.

(475.) And whereas the said A. B. and C. D. have mutually agreed to determine and dissolve the said copartnership, and no longer to be or continue partners in the said trade or business.

Agreement to dissolve copartnership, and execute release.

(476.) And whereas in pursuance of the said arrangement, it hath been agreed that the said copartnership between the said A. B. and C. D. should be immediately dissolved, and that they should respectively make and execute the release and enter into the several covenants and agreements hereinafter contained.

Desire that all partnership and private accounts should be closed.

(477.) And whereas the said parties hereto are desirous that all partnership accounts up to the &c., and all private accounts up to the same period, should be and be considered as finally closed, and not liable to be re-opened.

Agreement between partners to execute mutual release.

(478.) And whereas the said parties hereto in order to prevent any further disputes arising out of or from any of the said accounts,

have agreed to execute and give such mutual release as hereinafter mentioned.

(479.) And whereas the said parties have Settlement of partnership ac- counts. on the day of the date of these presents stated and settled a full, fair, and final account between them of and concerning all goods, wares, merchandise, ready money, stock in trade, debts, credits, and all other effects, matters, and things belonging, due, or owing, to or from the said parties as co-partners or joint-traders, in anywise touching or concerning the said copartnership, as by the said stated account, a duplicate whereof remains with each of them, doth appear.

(480.) And whereas the clear balance or share due to the said A. B., in respect of the said copartnership, on the last day of settlement of the accounts thereof next preceding the decease of the said A. B., viz., on the — day of —, amounted to the sum of £—, which, with the said allowance of £— per cent. thereon as aforesaid, made together the aggregate sum of £—.

PAYMENT.

(481). And whereas in pursuance and performance of the said agreement on the part Payment of purchase-money.

of the said A. B., he the said A. B., hath paid to the said C. D. the sum of £— of lawful money of Great Britain, as he the said C. D. doth hereby admit and acknowledge. (a)

(a) Sometimes the fact of payment is recited, and this, at law, would operate as an estoppel. The more usual plan, however, is to insert a general receipt in the operative part of the deed, and to indorse a particular one. *At law*, the former is conclusive, and cannot be denied by any one who executes the deed; (*Baker v. Dewey*, 1 B. & C. 704; *Rowntree v. Jacob*, 2 Tau. 141.) but the latter amounts only to a parol, *prima facie* acknowledgment of payment; and is not conclusive evidence of it against the party, for he may show that it was given under a mistake or obtained by fraud. (*Benson v. Bennett*, 1 Campb. 394, n.; *Stratton v. Rastall*, 2 T. R., 306; *Lampon v. Corke*, 5 B. & A. 606, S. C. 1 D. & R. 111. *Shafe v. Jackson*, 3 B. & C. 421; *Graves v. Key*, 3 B. & Ad. 313.) *In equity*, the general receipt is treated as a mere matter of form, but if there be no indorsed receipt, this in a recent transaction is considered as constructive notice that the money remains unpaid, (2 Prest. Conv. 429, 430.) Still if the money has not in fact been paid, and this can be made out to the satisfaction of the Court, equity will afford relief, whatever receipt may have been given, be it in the deed or upon it, or otherwise. (*Coppin v. Coppin*, 2 P. Wms. 291; *Ryle v. Haggie*, 1 Jac. & W. 234; *Winter v. Lord Anson*, 1 Sim. & Stu. 434.) On the general doctrine of the vendor's lien for the purchase money, if not paid, see *Mackreth v. Symmons*, 15 Ves. 329 (where *Lord Eldon* reviews all the former cases on this subject,) and *Sugd. V. and P. ch. xii.*

(482). And whereas by another order of the said Court, made in the said cause bearing date on or about &c., it was ordered that the said A. B. should on or before the &c., pay the sum of £—, being the residue of his said purchase money for the premises comprised in the said lot, into the Bank of England, with the privity of the said Accountant-General, to the credit of the said cause.

(483) And whereas in pursuance of the said order, the said A. B. did, on the &c., with the privity of the said Accountant-General, pay the sum of £— into the Bank of England, to the credit of the said cause, as appears by the receipt of one of the cashiers of the Bank of England, and the certificate of the said Accountant-General.

(484). And whereas the said sum of £— was paid and advanced by the said A. B., C. D., and E. F., in the following proportions, (that is to say) the sum of £—, part of the said sum of £—, by the said A. B.; the sum of £—, further part thereof, by the said C. D.; and the sum of £—, residue of the said sum of £—, by the said E. F.

(485.) And whereas the said A. B. being desirous of receiving the said sum of £—,

Order to pay
residue of
purchase mo-
ney into
Bank of
England, to
the credit of
cause.

Payment
pursuant to
order of
Court.

Payment of
money in
certain pro-
portions.

Request of
payment of
mortgage
debt.

and the said C. D. being also desirous of receiving the said sum of £—, have respectively requested the said E. F. to pay off and discharge the same sums respectively.

Desire to
pay off mort-
gage.

(486.) And whereas the said A. B. is desirous of paying off the said sum of £—, so due and owing to the said C. D. as aforesaid, upon the said hereinbefore in part recited indentures of mortgage and further charge.

Default in
payment of
principal.

(487.) And whereas default was made in payment of the said principal sum of £—, at or upon the day or time appointed for payment of the same in and by the said recited indenture of &c., and the said principal sum of £— still remains due upon or by virtue of the said security, but all interest for or in respect of the same hath been duly paid up to the day of the date of these presents.

*Id. Another
form.*

(488.) And whereas the said sum of £— was not paid at the time mentioned in the said proviso for redemption, by reason whereof the estate and interest of the said A. B. in the said several hereditaments and premises became absolute at law.

Non-pay-
ment of mo-
ney within
the time di-
rected by
will.

(489.) And whereas the said A. B. did not within — months after the decease of the said C. D. make the several payments by the said

will and codicil of the said C. D. directed to be made by him.

(490.) And whereas the said annuity, or Payment of annuity. yearly rent charge of £—, hath been duly paid up to the day of the date of these presents, as the said A. B. doth hereby admit and acknowledge.

(491.) And whereas all interest from time to time accrued due upon the said principal sum of £— hath, together with the said principal sum, been duly paid to the said A. B. and C. D., as they the said A. B. and C. D. do hereby respectively admit and acknowledge.

(492.) And whereas the said sum of £—, Id. Another form. and all interest thereon, have long since been paid off and discharged.

(493.) And whereas the whole of the said sum of £—, mentioned in the condition of the said hereinbefore in part recited bond, together with all interest for the same, up to the day of the date of these presents, hath been paid to the said several persons parties hereto of the first, second, and third parts respectively, by the said C. D., and divided between them, according to their respective rights therein, as they, the said several per-

—

sons parties hereto, as aforesaid, do hereby respectively admit and acknowledge.

Payment of principal and interest ; term not hitherto as signed.

(494.) And whereas the said sum of £—, secured by the said hereinbefore in part recited indenture of &c., and all interest for the same, have been long since duly paid off and discharged ; but no assignment hath yet been made of the said term of — years.

Payment of part of mortgagemoeny.

(495.) And whereas previously to the day of the date of the indenture next hereinafter recited, the sum of £—, had been paid by the said A. B. and C. D. in reduction of the said principal sum of £—, so that the sum of £— only, remained due in respect of the said mortgage debt.

Payment of part of mortgagemoeny and whole of interest.

(496.) And whereas the said A. B. hath paid the sum of £—, unto the said C. D. in part discharge of the said sum of £—, the mortgage money aforesaid, and also all interest in respect of the same sum of £—, up to the day of the date of these presents, so that the principal sum of £— only, now remains due, upon or by virtue of the said mortgage or security of the &c., as he, the said C. D., doth hereby admit and acknowledge.

Payment of interest.

(497.) And whereas all interest due in respect of the said principal sum of £—, hath

been duly paid up to the day of the date of these presents, as he, the said A. B., doth hereby admit and acknowledge.

(498.) And whereas all sums of money by way of interest upon the said sum of £— three per cent. reduced Bank Annuities, have been duly paid and satisfied up to the last day of payment of the dividends upon the said stock, so that the said sum of £— three per cent. reduced Bank Annuities only, remains due upon or by virtue of the said lastly hereinbefore in part recited indenture of release.

(499.) And whereas upon the contract for such sale, it was agreed that the sum of £—, being the value of the said sum of £— three per cent. reduced Bank Annuities, should be retained by the said A. B. out of the said purchase money aforesaid, in full payment and discharge of the principal sum secured upon the said hereinbefore in part recited indenture of release of the &c.

(500.) And whereas the said A. B. some- time since entered into the receipt of the rents of the said mortgaged premises, and re- ceived various sums of money on account thereof, by means of which the said princi-

• pal sum of £— hath been reduced to the sum of £—, as he, the said A. B., doth hereby admit and acknowledge.

Application
of part of
rents of es-
tates directed
to be sold in
payment of
debts and in-
terest.

(501.) And whereas no part of the hereditaments comprised in the said indenture of &c., hath yet been sold, under the trusts of the same indenture; but the said A. B. and C. D. have, at different times, as well in the lifetime of the said E. F., as since his decease, applied certain parts of the rents, issues, and profits of the said hereditaments, and of the personal estate of the said E. F., amounting to the sum of £—, or thereabouts, in discharge of several of the bond and simple contract debts, specified in the said schedule to the said indenture of &c., amounting in the whole to the sum of £—; and also in payment of the interest which hath from time to time become due in respect of such of the said mortgage, bond, and simple contract debts specified in the said schedule as carried interest.

Agreement
to pay mo-
ney to trustee
and to assign
term.

(502.) Whereas it hath been agreed by and between the said A. B. and C. D. and E. his wife, that the said respective sums of £— and £—, should be paid to the said E. F., upon and for the trusts, in-

tents, and purposes, hereinafter declared of or concerning the same, and that the residue of the said term of — years should be assigned by the said C. D. and E. his wife unto the said E. F., in manner hereinafter mentioned.

(503.) Whereas the said A. B., in consideration of the natural love and affection which he hath for his daughter C. B., now Payment of money to trustees, as a provision for infant daughter. an infant under the age of twenty-one years, and in order to make some provision for her, hath, before the day of the date and execution of these presents, paid the sum of £—, of lawful money of Great Britain, into the hands of the said D. E. and F. G., in order that they may stand possessed of the same sum, upon the trusts, and for the intents and purposes hereinafter expressed and declared concerning the same.

(504.) And whereas the said A. B. hath agreed to enter into the covenant hereinafter contained, for payment of the interest which shall become due and be payable during his life estate, in respect of the said sum of £—. Agreement by tenant for life to covenant for payment of interest during his life.

PETITION. *See Bankruptcy, Infant, Larceny, &c.*

PLEADINGS. *See Action, Suit.*

POLICY.

Policy of Insurance against fire. (505.) And whereas by a certain instrument or policy of insurance, under the hands and seals of certain directors of the — office, bearing date on or about the &c., the messuages or tenements, erections, and buildings, comprised in the indenture of lease hereinbefore mentioned, and hereby assigned, are insured against loss or damage by fire, until the — day of — in the sum of £—, in the name of the said A. B.

Id. Another form. (506.) And whereas a part of the said premises was by a certain instrument or policy of insurance of the — society for the insuring of houses and goods from loss or damage by fire, bearing date &c., marked —, and numbered —, insured to the said A. B., his executors, administrators, and assigns, from loss or damage by fire, to the amount of £—, for the term of — years thence next ensuing.

(507.) And whereas by a certain instrument or policy of insurance, underwritten and subscribed at London, on the &c., an insurance was effected in the name of &c., of the said ship or vessel called the —, her stores &c., at and from &c., to the amount of £—, for the sum of £—.

(508.) And whereas for more effectually securing the repayment of the said sum of £—, and the interest thereof, the said A. B. hath agreed to obtain from &c., a policy of insurance for the sum of £—, payable at his death.

(509.) And whereas upon the treaty for the said intended marriage, it was agreed that the said A. B. should secure to the said C. D. and E. F., as trustees for the said M. A. and the issue, if any, of the said intended marriage, the sum of £—, to be payable at or upon his decease, by an assurance to that amount, in some or one of the public offices of assurance in the cities of London and Westminster, or one of them, and for that purpose should obtain a policy or policies of assurance for the sum of £—, payable at his decease, and that the policy or

policies of such assurance, and the money become due and payable by virtue thereof, should be assigned by the said A. B. to the said C. D. and E. F., to be held by them upon the trusts hereinafter declared, and that the said A. B. should enter into the covenant hereinafter contained for continuing and keeping on foot the benefit of the said policy or policies of assurance.

Obtainment of policy. (510.) And whereas the said A. B. hath obtained from the &c., in his own name, a policy or instrument, under the hands and seals of —, numbered —, and bearing date on or about the &c., thereby engaging, upon the terms therein expressed, to pay the sum of £—, on the decease of the said A. B.

Id. Another form. (511.) And whereas the said A. B. hath obtained from the &c., in his own name, a policy or instrument, under the hands and seals of — and —, two of the directors of the said society, numbered —, and bearing date on or about the &c., and thereby the said

(b) All bonuses belong to the persons entitled under a settlement of the policy, although the trusts declared in their favour relate only to a part of the original sum assured. (*Courtney v. Ferrers*, 1 Sim. 137.)

ectors engaged, upon the terms therein expressed, to pay to the executors or administrators of the said A. B., the sum of £—, within six months after the decease of the said A. B.

(512.) And whereas by an instrument or policy of assurance of &c., numbered —, and bearing date the &c., the sum of £— as insured to the said A. B., payable on the death of the said C. D., if he should die within the time and in manner in the said policy of assurance expressed in that behalf, and if such premiums as therein mentioned should be duly paid at the times thereby appointed.

(513.) And whereas the said A. B. did, in the &c., cause an assurance of the &c., to be effected of the sum of £—, to be paid to him the said A. B., his executors, administrators, or assigns, upon the decease of the said C. D., whenever the same should happen, at or under the annual sum or premium of £—, and the said society executed and gave to the said A. B. an instrument or policy of assurance of the said sum of £—, bearing date &c., and numbered —. And whereas it hath been agreed that the said

Policy of assurance for life.

Assurance upon life, agreement to pay premium, and stand possessed of policy upon trust.

premium of £—, annually to become due in respect of the said policy, should be paid by the said C. D., in the manner hereinafter mentioned, and that the said A. B. should stand possessed of the said policy, upon the trusts hereinafter declared of and concerning the same.

PORTIONS.

Agreement
on marriage
to advance
sum of mo-
ney as a por-
tion for wife,
husband
agreeing to
assign and
convey es-
tates and
stock to
trustees.

(514.) And whereas upon the treaty for the said intended marriage it was agreed that the said A. B., as or for the portion of fortune of the said C. D., should advance to the said E. F. the sum of £—, and secure the further sum of £— to be paid to the said E. F., upon the decease of the said A. B. and that the said E. F. should convey the manors and other hereditaments hereinafter particularly mentioned to the uses and upon the trusts hereinafter expressed and contained of or concerning the same; and that the said E. F. should transfer the sum of £— three per cent. consolidated Bank Annuities, into the names of the said G. H. and I. K.; and that the said G. H. and I. K.

their executors, administrators, and assigns, could stand and be possessed of and interested in the said sum of £— three per cent. consolidated Bank Annuities, and the dividends and annual produce thereof, upon the trusts hereinafter expressed of or concerning the same.

(515.) Whereas by indentures of lease and release, bearing date respectively the &c., the release being made or expressed to be made between A. B. of the first part, C. D. of the second part, and E. F. and G. H. of the third part, all and singular the manors, messuages, farms, lands, and hereditaments mentioned and comprised in the schedule hereunder written or hereunto annexed, were, together with divers other lands and hereditaments, conveyed and limited to the said A. B. and his assigns during his life, with remainder to trustees to preserve contingent remainders, with remainder to the said E. F. and G. H. for the term of one thousand years, upon certain trusts herein mentioned, and which, together with the said term of one thousand years, have since determined, with remainder to C. B., since deceased, the then eldest son and heir

Power to charge estates with portions when in actual possession.

apparent of the said A. B. and his assigns for his life, with remainder to trustees to preserve contingent remainders during the life of the said C. B., with remainder to the use of the first and other sons of the body of the said C. B., successively in tail male, with remainder to the use of me [*or, the said*] B. B. and my [*or, his*] assigns for life, with divers remainders over: And in the said indenture now in recital it was provided, that it should and might be lawful to and for [me] the said B. B., when and as by virtue of and under the limitations therein and hereinbefore mentioned I [*or, he*] should be in the actual possession of, or entitled to the receipt of the rents and profits of the said manors, messuages, farms, lands, and hereditaments thereby first granted and released, or expressed and intended so to be, or to the immediate freehold thereof, by any deed or deeds, instrument or instruments in writing with or without power of revocation, to be by me [*or, him*] sealed and delivered in the presence of and attested by two or more credible witnesses, or by any [*or, his*] last will and testament in writing, or any codicil or codicils thereto, to be by me [*or, him*]

signed and published in the presence of and to be attested by three or more credible witnesses ; (but subject as therein mentioned) to subject or charge all or any part or parts of the said manors, messuages, lands, farms, and other hereditaments, with the payment of any sum or sums of money, so that such charge or charges should not exceed in the whole the principal sum of £—, with interest for the same, from the time of making any such charge, for the portion or portions of all and every such one or more of my [or, his] children, other than and besides an eldest or only son, or who by virtue of or under the limitations thereinbefore contained, should, for the time being, be entitled to the said manors, messuages, farms, lands, and hereditaments thereby first granted and released, or expressed and intended so to be, in possession, to be paid and payable to such child or children respectively, at such age or respective ages, days or times, in such manner, if more than one in such shares and proportions, as I [or, the said B. B.] by any such deed or deeds, instrument or instruments in writing, will or wills, codicil or codicils, should direct or appoint ; and that

for securing the payment of the sum or sums of money so to be charged under or by virtue of the said power with interest for the same respectively, it was provided that it should and might be lawful to and for [me] the said B. B., by the same or any other deed or deeds, instrument or instruments in writing to be by me [*or, him*] sealed, delivered and attested, or by such last will or testament in writing, or codicil or codicils thereto so to be by me [*or, him*] signed, published and attested as thereinbefore mentioned, to limit the aforesaid manors, messuages, farms, lands, and hereditaments, so to be respectively charged as therein mentioned, to any person or persons, by way of trust or mortgage, for any term or number of years whatsoever, with or without impeachment of waste, so that the charge or charges to be made, and the use and uses to be limited, by any such limitation or limitations respectively, as last therein and hereinbefore mentioned, be made to cease, or be made redeemable on full payment of such sum or respective sums of £—, or so much thereof respectively as should be charged by virtue of this present power, and the interest thereof,

by the person or persons who, for the time being, should be entitled to the freehold and inheritance of the said manors and other hereditaments, so charged and limited as aforesaid. And whereas the said B. B. is [or, I the said B. B. am] entitled under the Limitations hereinbefore mentioned to the actual possession, and to the receipt of the rents and profits of the manors, messuages, farms, lands, and hereditaments mentioned and comprised in the schedule hereunder written and hereunto annexed, being part of the manors, messuages, and other hereditaments comprised in the said hereinbefore mentioned indenture of release.

(516.) And whereas a marriage hath been agreed upon, and is shortly intended to be solemnized between A. B. and the said C. D., and for the advancement and preferment in marriage of the said C. D. the said E. F. hath proposed and determined to execute the said hereinbefore recited power, by appointing one full undivided third part or share of and in all and singular the said trust-monies and property unto the said C. D., in manner hereinafter mentioned.

Agreement
on marriage
to execute
power of
appointing
portions.

Appoint-
ment of por-
tion.

(517.) And whereas by indentures of lease and release, bearing date respectively, &c., and made or expressed to be made between &c., being the settlement made previously to and in contemplation of the marriage then intended and which was shortly afterwards had and solemnized between the said A. B. and the said C. D., in pursuance of and by force and virtue and in exercise and execution of the power or authority to her, the said C. D., given or limited by the said indentures of the &c., and of every other power and authority enabling her in that behalf, she, the said C. D., did direct, limit, or appoint that the sum of £—, part of the said sum of £—, which by the said indenture of release and settlement was subject to the power of appointment of the said C. D., should be for the portion of the said B. B., and that the same should, immediately after the death of the said C. D., be raised and paid to her the said B. B., or to such person or persons as should be then entitled to the same by virtue of the indenture now in recital.

*Id. Another
form.*

(518.) And whereas by a certain deed-

poll, or instrument in writing, bearing date on or about &c., under the hand and seal of the said A. B., she, the said A. B., did direct and appoint the said C. D. to raise, after the decease of her, the said A. B., or in her lifetime, if she should direct the same, by any deed or writing under her hand and seal, to be by her duly executed, in the presence of two or more credible witnesses, the said sum of £—, for the portion and benefit of the said E. F., G. H., and I. K., to be paid to and amongst them, at such times, and in such proportions, as the said A. B. should, by such deed or writing, as aforesaid, or by will, limit, direct, and appoint, and for want of such direction, limitation, or appointment, to be paid and divided amongst the said E. F., G. H., and I. K., in manner therein mentioned.

(519.) And whereas all and every sum and sums of money which have become due and payable to the said A. B., C. D., and E. F. respectively, either for allowance or maintenance, or for the interest of their several and respective portions of the said sum of £—, to be raised for and paid to the said A. B., C. D., and E. F., under the

Payment of
money for
main-
te-
nance, and
for interest
of portions.

trusts of the said term of — years, pursuant to the will of the said G. H., deceased, have been fully paid and discharged, as the said A. B., C. D., and E. F., do hereby respectively admit and acknowledge.

Agreement
to merge
term in
order to dis-
charge es-
tate from
portions.

(520.) And whereas in order to enable them to carry the aforesaid contracts for sale into execution, the said A. B. and C. D. are desirous that the said term of — years should be merged in the inheritance of the said premises so agreed to be sold, in order that the same may be discharged from the portions to be raised under the same term; and the said A. B. and C. D., being satisfied that the said estates, in the said county of D., are of more than sufficient value to answer the said portions, have agreed to surrender the said term to the extent aforesaid, and to release the said estates so to be sold from the aforesaid portions.

That por-
tions remain
due.

(521.) And whereas the sum directed by the said A. B., deceased, to be raised for the portions of his younger children, under the trusts of the said term of — years, still remains due; and the said A. B., C. D., and E. F., either alone or jointly, with their respective husbands, are the only persons

entitled to the sum directed to be raised for portions as aforesaid.

(522.) And whereas no part of the said ^{Id. Another form.} sum of £—, directed to be raised for the portions of the younger children of the said A. B., hath been raised or paid.

(523.) And whereas the said A. B. hath ^{Application for loan to pay portion.} not yet received her share of the sum of £—, by the said recited indenture of &c., directed to be raised for the portions of the children of the said C. D., by the said E. his wife, (other than their eldest son,) which share amounts to the sum of £—: and the said A. B. having required payment thereof, he, the said E. F., hath applied to and requested the said G. H. to advance the sum of £— to be applied in and towards payment of the said portion or share which he, the said G. H., hath agreed to do, upon having the repayment of the said sum of £—, with interest, secured to him in manner herein-after mentioned.

POWERS. *See Appointment, Trustees.*

(524.) Whereas by indentures of lease ^{Conveyance by lease and release and fine to such} and release, bearing date respectively the

uses as pur-
chaser shall
appoint. &c., the release being made, or expressed to be made, between A. B. and C. his wife of the first part, the said E. F. of the second part, and the said G. H. of the third part, and by a fine *sur cognissance de droit come ceo, &c.*, duly acknowledged and levied by the said A. B. and C. his wife, in or as of— term, in the — year of the reign of &c., in pursuance of a covenant for that purpose entered into by the said A. B., in and by the said indenture of release, and by force of a declaration of the uses of the said fine in the same indenture contained, in consideration of the sum of £— to the said A. B. paid by the said E. F., the messuages, lands, and other hereditaments hereinafter particularly mentioned, and intended to be hereby appointed and released, with their appurtenances, were conveyed, limited, and assured, to such uses, upon such trusts, for such intents and purposes, and with, under, and subject to such powers, provisoies, agreements, and declarations, as the said E. F. should by any deed or deeds, writing or writings, with or without power of revocation, to be by him sealed and delivered,

in the presence of and to be attested by two or more credible witnesses, from time to time, direct, limit, or appoint; and for default of, and until such direction, limitation, or appointment, to the use of the said E. F. and his assigns during his life, with a limitation to the use of the said G. H. and his heirs, during the life of the said E. F., in trust for him the said E. F. and his assigns during his life, with remainder to the use of the said E. F., his heirs and assigns for ever.

(525.) And it was by the said indenture now in recital declared and agreed that the said A. B. and C. D., and the survivor of them, and the heirs, executors, and administrators of such survivor, at any time during the lives of the said E. F. and G. H., and the life of the survivor of them, and they and he were thereby authorized and required, notwithstanding the uses, estates, limitations, and trusts, thereafter limited or declared and contained, at the request and by the direction of the said E. F. and G. H., or of the survivor of them, testified by some writing or writings under their hands and seals, or under the hand and seal of the sur-

Power of
sale and ex-
change, and
of revocation
and new ap-
pointment.

vivor of them, and to be attested by two or more credible witnesses, to make sale and dispose of, or to convey in exchange, all or any part of the said hereditaments and premises thereby granted and released, to any person or person, for such price and prices in money as to them the said A. B. and C. D., or the survivor of them, his heirs, executors, or administrators should seem reasonable ; and for the purpose of making such sale and disposition, it was thereby declared that it should be lawful for the said A. B. and C. D., and the survivor of them, his heirs, executors, or administrators, by any deed or deeds, writing or writings, to be by them, or the survivor of them, signed, sealed, and delivered, in the presence of and to be attested by two or more credible witnesses, with the consent and approbation of the said E. F. and G. H., or the survivor of them, to be testified as aforesaid, to revoke, determine, and make void, all and every the uses, trusts, estates, limitations, powers, provisoies, and agreements thereby limited, declared, created, and conveyed of and concerning the said hereditaments and premises so to be sold and disposed of, and

by the same, or any other deed or deeds, writing or writings, to be sealed and delivered, and with such consent and approbation as aforesaid, to limit and appoint the same hereditaments and premises whereof the uses should be so revoked, unto such purchaser or purchasers to whom the same should be sold, or to his, her, or their heirs, executors, or administrators, or otherwise, to limit, create, declare, and appoint such new or other use or uses, trust or trusts, estate or estates, of and concerning the same hereditaments and premises, as should be requisite and necessary for the executing and effecting such sale or disposition, and upon payment of the money arising by sale of the said hereditaments and premises, or any part or parts thereof, to give and sign receipts for the money for which the same hereditaments should be so sold, which receipts should be sufficient discharges to any purchaser or purchasers for the purchase-money for which the same hereditaments should be sold, or for so much thereof as in such receipt or receipts should be acknowledged or expressed to be received; and such purchaser or purchasers should not

afterwards be answerable or accountable for any loss, misapplication, or non-application of such purchase-money, or any part thereof.

*Id. Another
form.
(Short forms)* (526.) And in the indenture now in recital is contained a power authorizing and enabling the said A. B. and C. D., and the survivor of them, and the executors and administrators of such survivor, in the manner therein mentioned, to make sale, partition, or exchange of all or any part of the said messuages, lands, and other hereditaments therein comprised.

*Death of one
of two trus-
tees, where-
upon powers
became vest-
ed in the
other.* (527.) And whereas the said A. B. departed this life on or about &c., and thereupon the powers of disposition and conveyance, and of revocation and new appointment, by the said hereinbefore recited indenture of release and settlement limited to the said A. B. and C. D. jointly, as hereinbefore is mentioned, became, and the same now are vested in, the said C. D. by survivorship.

*Non-exer-
cise of
power.* (528.) And whereas the said recited power of revocation and new appointment hath not been exercised.

*Desire to
exercise
power.* (529.) And whereas the said A. B. and C. his wife are desirous of exercising the

power of revocation and new appointment contained in the said recited indenture, for the purpose of performing their said recited contract or agreement with the said D. D.

(530.) And whereas the said A. B. is desirous of executing the said power of appointment so given by the said hereinbefore in part recited indenture of settlement in favour of the said C. D.

Desire to execute power in favour of particular person.

PRESENTATION.

(531.) Whereas the above-named A. B., by a deed-poll, under his hand and seal, bearing even date with the above-written bond or obligation, hath presented the said C. D. to the vicarage and parish church of A., in the county of B.

Deed of presentation to vicarage.

PROBATE.

(532.) And whereas the said A. B. on the &c., duly made and executed a proxy of renunciation; and thereby renounced and refused the probate and execution of the said

Proxy of renunciation—Act of court pronouncing discharge.

will, and an act of the said Prerogative Court hath been pronounced for the discharging of the said A. B. of and from the said trusts.

Renunciation of probate, desire to disclaim trusts, and release legacy.

(533.) And whereas the said C. D. hath, in due form of law, renounced the probate of the said will of the said A. B., and hath not in any respect acted in the trusts thereby reposed in him, and is now desirous of disclaiming the same, and executing a release of the legacy of £—, bequeathed to him by the said will for his trouble in the execution of the said trusts.

Probate of will.

(534.) And whereas the said A. B. departed this life on or about the &c., without having altered or revoked his said will, and the same was, on or about the &c., duly proved by the said C. D. and E. F., [or, by the said executors] in the — Court of — [or, in the proper Ecclesiastical Court.]

Probate of will and codicil.

(535.) And whereas, the said A. B. departed this life on about the &c., without having altered or revoked his said will, save by his said codicil, and without having altered or revoked his codicil; and the said will, with the codicil annexed, was, on or about the &c., duly proved by the said C. D.

and E. F., in the — Court of — [*or, in the proper Ecclesiastical Court.*]

(536.) And the said will was, on or about the &c., duly proved in the — Court of —, by the said C. D. and E. F. only, the said A. B. having renounced the probate of such will, and refused to act in the execution thereof.

(537.) And whereas the said will, with the codicil annexed, of the said A. B. was, on or about the &c., duly proved by the said C. D., in the — Court of —, and also *per testes* in the High Court of Chancery, in a cause wherein the said C. D. was plaintiff, and E. F. and others, defendants.

(538.) And whereas by a decree of his Majesty's High Court of Chancery, bearing date on about the &c., made in a cause wherein the said A. B., a minor, and others were plaintiffs, and C. D. and others were defendants, the said will of the said E. F., deceased, was declared to be well proved; and it was thereby ordered, that the same should be established, and that the trusts thereof should be carried into execution; and that it should be referred to G. H., one of the masters of the said Court, to take an

Probate by
two of the
executors
only.

Probate of
will in Ec-
clesiastical
Court, and
per testes in
Chancery.

Decree de-
claring will
to be well
proved, or-
dering trusts
to be execut-
ed, and di-
recting ac-
count.

account of the personal estate of the said testator, and of his debts, funeral expences, and legacies, and that the said master should inquire what freehold and copyhold estates the said testator was seised of at the time of making his will, or at his death.

Id. Another form. (539.) And whereas by a decree made by the High Court of Chancery on the &c., in a certain cause wherein His Majesty's then Attorney-General, on the relations of A. B. was informant, and E. F. and others were defendants, the said will was declared to be well proved, and the trusts thereof were agreed to be performed, and carried into execution.

Id. Another form. (540.) And by a decree of His Majesty's High Court of Chancery, made and pronounced in a cause wherein the said A. B. was plaintiff, and the said C. D. and others were defendants, the said will and codicil were declared to be well proved, and the trusts thereof were directed to be carried into execution.

PRODUCTION. *See Deed.*

PROMISSORY NOTE.

(541.) And whereas the said A. B. made a ^{Promissory Note.} certain promissory note in writing, bearing late on or about the &c., whereby the said A. B. promised to pay to the said C. D. [or, to the said C. D. or his order, or to the order of the said C. D.] — months after the date thereof, the sum of £—, with lawful interest for the same, [or, with interest for the same, after the rate of £— per cent.], value received.

PROSECUTION.

(542.) Whereas the several persons parties hereto of the first part, being inhabitants of the parish or town of, &c., in the county of, &c., have agreed to form themselves into an association for the prosecution of felons, and other persons guilty of theft and other crimes and offences within the boundaries of the said parish, and for that purpose to give such rewards, and institute and observe such rules and regulations as herein-after are mentioned.

Agreement
to associate
for the pro-
secution of
felons.

PROTECTOR.

Appoint-
ment of pre-
tector in lieu
of the pro-
tector under
settlement.

(543.) Whereas by indentures of lease and release, bearing date respectively, the &c., (duly enrolled in His Majesty's High Court of Chancery, on the &c.,) the release being made or expressed to be made between A. B. of the first part, C. D., of the second part, E. F. and G. H., of the third part, and I. K. and L. M. of the fourth part, for the considerations therein mentioned, certain manors, messuages, lands, and other hereditaments were conveyed and limited to the use of the said C. D. and his assigns, for life, with remainder to the use of the said E. F. and G. H., and their heirs, during the life of the said C. D., in trust, to preserve contingent remainders, with remainder to the first, second, third, and every other son of the said C. D., successively in tail male, with divers remainder over. And by the indenture now in recital, the said A. B. did nominate and appoint the said I. K. and L. M. and the survivor of them, to be protector of the settlement thereinbefore made, in lieu of the said C. D., for and during the natural life of

the said C. D., with all the powers and authorities incident to such protectorship. (a)

(544.) And in the settlement now in recital is contained a proviso that if any of the persons thereby appointed or to be appointed protector, as thereafter mentioned, should die, or should by deed relinquish his or their office of protector, then and in every such case it should be lawful for the said A. B., by any deed or deeds duly executed, to appoint any one person or number of persons in esse, and not being an alien or aliens, to be protector of the said settlement during the life of the said C. D., in the place of the person or persons so dying or relinquishing his or their office of protector, provided, nevertheless, that by virtue or means of any such appointment, the number of persons, composing the said protector, should never exceed three.

(545.) And whereas the said I. K. is desirous of relinquishing the office of protector reposed in him, and the said L. M. by the said hereinbefore in part recited indenture of settlement [or, by the within written indenture of settlement.]

(a) See 3 & 4 W. IV., c. 74, s. 32.

Desire to ap-
point new
protector.

(546.) And whereas the said A. B. hath requested the said N. O. to become protector, jointly with the said L. M., of the said settlement, in the place of the said I. K., according to the power or proviso for that purpose therein contained and hereinbefore recited.

Relinquish-
ment of pro-
tectorship
and appoint-
ment of new
protector.

(547.) And whereas by an indenture bearing date &c., and made or expressed to be made between the said I. K. of the first part, the said A. B. of the second part, and the said N. O. of the third part, he the said I. K., did relinquish his office of protector of the said hereinbefore in part recited settlement, [*or, the within written settlement*], and all powers and authorities incident thereto. And the said A. B., in exercise of the power or authority to him given, or reserved by the said hereinbefore in part recited settlement, [*or, the within written settlement*,] did appoint the said N. O. to be protector, jointly with the said L. M., of the said settlement, in the place of the said I. K., with all powers and authorities incident to such office.

Consent of
protector to
disposition.

(548.) And whereas the said A. B., as protector of the settlement, made in and by the said hereinbefore in part recited will, [*or, of the said hereinbefore in part recited set-*

tlement,] hath consented, and by these presents doth consent, to the disposition and conveyance of the said messuages, lands, and other hereditaments, hereinafter contained, testified by his being a party to and executing these presents. (b)

(549.) And whereas by a deed-poll, or instrument in writing under the hand and seal of the said C. D., bearing date the &c., he, the said C. D., did give and grant his absolute and unqualified consent and approbation to any conveyance, assurance, and disposition which should be made and executed by the said A. B., either on the day of the date and execution of the deed now in recital, or at any time thereafter, of the manors, messuages, lands, and other hereditaments comprised in and conveyed by the said therein and hereinbefore recited indenture of, &c.,

Deed of absolute consent.

(b) The consent of the protector to the disposition of the tenant in tail, must be given either by the same assurance by which the disposition is effected, or by a deed distinct from the assurance, and executed either on or at any time before the day on which the assurance is made, otherwise the consent will be void. 3 & 4 W. IV. c. 74, s. 43. If given by a distinct deed and not confined to any particular disposition, it will operate as an absolute and unqualified consent. *Sect. 43.* When once given it cannot be revoked. *Sect. 44.*

or any part or parts thereof, subject nevertheless and without prejudice to the estate for life of him the said C. D., of and in the same hereditaments, and all powers, privileges, (except the power of consenting a protector,) annexed to such life estate.

Deed of qualified consent.

(550.) And whereas by a deed-poll, or instrument in writing, under the hand and seal of the said C. D., bearing even date with the lastly hereinbefore in part recited indenture, he, the said C. D., (after reciting the same indenture as or to the effect hereinbefore recited,) did give and grant his consent to the conveyance, assurance, and disposition of the said manors, messuages, lands, and other hereditaments so made as aforesaid by the said hereinbefore in part recited indentures of, &c.

PURCHASE. *See Annuity, Advowson, Auction, Contract for Purchase, &c.*

RECEIPT. *See Payment.*

RECEIVER.

Power to appoint receiver. (551.) And in the indenture now in recital, it was declared, that it should be lawful

for the said A. B. and C. D., and the survivor of them, and the heirs, executors, administrators, and assigns of such survivor, from time to time, to appoint an agent or a receiver to manage the said manors and hereditaments, and to receive the rents, issues, and profits thereof, and to displace such agent or receiver at their or his pleasure, and to allow such agent or receiver such a salary, or other compensation for his trouble therein, as to the said A. B. and C. D., or the survivor of them, or the heirs, executors, administrators, or assigns of such survivor, should seem expedient and proper.

(552.) And whereas the said A. B. and C. D. have agreed to appoint the said E. F., to be the receiver of the rents of the estates comprised in the said hereinbefore in part recited indenture of, &c., with such power and in such manner, as hereinafter mentioned.

(553.) And whereas upon the treaty for the purchase of the said annuity, or yearly rent-charge of £—, it was stipulated and agreed, that, for the purpose of securing the regular and due payment of the same, the said A. B. shonld be appointed a receiver,

from time to time, to collect and receive the rents and profits of the said manors, man-
sions, lands, and hereditaments, in the manner and upon the trusts hereinafter ex-
pressed and declared of or concerning the same.

Agreement to appoint receiver to secure payment of interest of loan.

(554.) And whereas upon the treaty for the loan of the said sum of £—, it was agreed that for securing the punctual payment of the interest of the said sum of £—, at the end of every half year, or within one month after the expiration of each half year, a receiver should be appointed to collect the rents of the said mortgaged premises, in manner and with the powers and authorities hereinafter contained, and that the said A. B. should be the said receiver.

RECONVEYANCE. *See Conveyance.*

RECOVERY.

Common recovery

(555.) And whereas a common recovery was suffered in pursuance of the said recited indenture of &c., of the said hereditaments, in the parish of — aforesaid, in or as of — term,

in the — year of the reign of &c., [or, in or as of the then next General Session of Assizes for the said county of Lancaster or Chester,] wherein the said A. B. was defendant, the said C. D. tenant, who vouched the said E. F., who vouched the common vouchee.

(556.) And whereas by indentures of lease and release, bearing date respectively the &c., the release being made or expressed to be made between the said A. B. and C. his wife of the first part, E. F. of the second part, G. H. of the third part, and the said I. K. of the fourth part, and by a common recovery duly suffered before His Majesty's Justices of the Court of Common Pleas at Westminster, in or as of — term, in the — year of the reign of &c., in pursuance thereof, and by force of a declaration of the uses of the said recovery, in the said indenture of release contained, the messuage, lands, and other hereditaments hereinafter particularly described, and intended to be hereby appointed and released, with their appurtenances, were conveyed, limited, and assured to such uses, &c. [See tit. "Uses."]

R

Conveyance
by lease and
release and
recovery.

REFERENCE. *See Arbitration, Infant, Infancy, Suit, &c.*

RELEASE. *See Lease and Release, Recharge.*

Agreement
to execute
conveyance
to remove
doubts as to
the validity
of former re-
lease.

(557.) And whereas doubts have been entertained whether the release hereinbefore recited was a good and effectual release, by reason that a lease was not executed previous to the release, for the purpose of giving a vested estate in the same premises to the said A. B. ; and in order to obviate such doubts respecting the validity of the same release, they, the said C. D. and E. F., have agreed to join in these presents in manner hereinafter mentioned. (a)

RENEWAL.

Agreement
for perpetual
renewal.

(558.) And in the said indenture now in recital is contained an agreement on the part of the said mayor, commonalty, and citizens,

(a) See Mr. Butler's opinion, ante, p. 233, note.

for the perpetual renewal of the said term at the end of — years of each respective term.

(559.) And whereas the said hereinbefore in part recited indenture of lease of the said premises hath been renewed, from time to time, at the usual and accustomed times of renewing the same lease. (b) [See art. 639.]

Renewal of
lease at the
accustomed
times.

RENT-CHARGE. *See Annuity.*

(560.) And whereas the said A. B. hath contracted and agreed with the said C. D. for the sale to him of a perpetual rent-charge, or yearly sum of £—, to be yearly issuing out of, and charged and chargeable upon, the hereditaments hereinafter mentioned and described, in manner hereinafter expressed, at or for the price or sum of £—.

(561.) And whereas the said A. B. hath contracted and agreed with the said C. D. for the absolute sale to him of the messuage, &c., hereinafter described, and intended to

Contract for
rent-charge.

(b) As to tenant-right of renewal, see Appendix, Note (E).

be hereby released, with the appurtenances and the fee simple and inheritance thereof in possession, free from all incumbrances, in consideration of the annual sum or yearly rent-charge hereinafter limited to the use of the said A. B., his heirs, and assigns, and the covenants on the part of the said C. D., hereinafter contained. (c)

That premises are charged with an annuity and certain rents.

(562.) And whereas the said freehold messuage or tenement and other hereditaments, were, at the execution of the said hereinbefore in part recited indenture of appointment, release, and assignment, and still are, (together with divers other hereditaments,) charged with and subject to the payment of a certain annuity of £—, payable to A. B. of &c., for the term of his natural life, and a certain reserved rent of £—, payable to C. D. of &c., and the said leaseholds are (together with other leasehold premises,) charged with and subject to the payment of an annual rent of £— to the mayor, bailiffs, and burgesses of &c.

(c) As to whether an assignee of a rent-charge can sue on a covenant to pay entered into by the grantor with the grantee, see *Milnes v. Branch*, 5 Mau. & Selw. 411.

(563.) And whereas the said A. B. hath requested the said C. D., to release in equity, but not at law (*d*), from the payment of the Agreement to release in equity certain parts of hereditaments charged

(*d*) It is an acknowledged principle of law that if an estate be subject to a rent-charge, the entire rent issues out of the whole and of every part of the land charged, carrying with it a corresponding power of distress. So inherent is this quality, that if it be destroyed by the grantee purchasing any part of the land, or releasing any part from the charge, the whole rent becomes extinguished. (Litt. s. 222; Touch. 345.)

This rule forms the subject of one of the dialogues in St. Germyn's Doctor and Student. The interlocutors, taking for granted that a release of part, operates as a release of the whole, proceed to discuss whether the rent-charge be extinguished also *in foro conscientiae*. (See B. II, c. 16, p. 85.—Ed. 1604.)

It is not easy to account for the origin of so rigid a rule, unless we have recourse to that feudal doctrine which would not admit any thing against common right to be apportioned. Now a rent-charge was deemed to be against common right: the grantee rendered no services to the lord, and was in fact a burthen upon the tenant. And this account is the more probable, because, under similar circumstances, a *rent-service* would be apportioned. (Litt. s. 222; 8 Rep. 105.)

It has been urged that no solid reason can be assigned, why the grantee of a rent-charge should be prevented from giving up any part of his security he may think proper, more especially as the doctrine is founded on principles, which the abolition of feudal tenures must have greatly weakened. In practice, however, the rule is still regarded, and various expedients have been employed for evading its application.

ed with annuity.
said annuity or yearly rent-charge of £—, so much and such part and parts of the lands and other hereditaments charged therewith,

Some recommend that in the release a new power of distress on the residue of the land should be given to the grantee of the rent, which, according to Lord Coke, would operate as a re-grant of the rent. (Co. Litt. 147.) This plan, however, is open to the objection, that if the estate had been incumbered subject to the original rent-charge, but prior to the release and grant of new powers of distress, these intervening incumbrances would be let in, and overreach the rent.

Another mode is for the grantee of the rent-charge to covenant with the purchaser, not to distrain or enter on the particular portion to be discharged. This plan, however, does not sufficiently exonerate the purchaser; for in case of a sale of the rent-charge to one without notice of the covenant, the purchaser's only remedy would be an action of covenant against the covenantor, without any right to be relieved at law or in equity from the rent: besides, the rent might be levied on other tenants, who could resort to the purchaser for a contribution. (Touch. 345.)

A third, and in the opinion of Mr. Preston, a still more eligible mode, is to assign the rent to trustees, in trust, to indemnify the purchased lands from the rent-charge, and from any contribution towards the same, and subject thereto, in trust, to enforce the payment of the rent-charge from the residue of the lands, and to pay the same to the annuitant, with a provision that in case any of the lands charged with the rent, should be vested in any person except the seller, his heirs, &c., entitled to have a contribution from the purchaser towards the same rent, that the trustee should levy so much only of

as are hereinafter particularly mentioned and described, which she the said C. D. hath consented to do in the manner hereinafter mentioned, being satisfied that the residue of the hereditaments and premises, charged with the said annuity, is an ample security for the payment thereof.

(564.) And whereas the said lands and other hereditaments so charged with the said annual sum of £— to the said A.B., as aforesaid, have been sold and disposed of; and, upon the sale thereof, it was agreed by and between the said A. B. and C. D., that the sum of £—, part of the purchase-money aris-

That lands charged with annuity have been sold, and agreement to invest part of proceeds in stock, and pay dividends to annuitant in lieu of rent-charge. Investment accordingly.

the rent as shall be payable, after deducting the amount of such part thereof as shall be payable for the lands which are purchased, by way of contribution towards the same; with a further provision that as between the seller and the annuitant, the lands unsold shall remain charged with the full amount of the rent, and with a covenant from the seller to pay the same as it shall become due. (Touch. 345.)

There is, however, another mode equally effectual, and much more simple, which is for the annuitant to execute an equitable release, accompanied with an express declaration that the release shall not operate at law. Should there be any attempt after the execution of such an instrument, to enforce payment of the rent-charge out of the land so released, a court of equity would at once restrain the party from proceeding.

ing from such sale, should be invested in the £3 per cent. consolidated Bank Annuities; and that the said A. B. should be entitled to, and should receive, the interest and dividends arising therefrom during her life, in lieu and substitution of the said rent-charge of £—: And whereas the said C. D. hath accordingly laid out and invested the said sum of £— in the purchase of the sum of £— £3 per cent. consolidated Bank Annuities, and hath caused the same to be transferred into, and the same is now standing in the joint names of the said E. F. and G. H., in the books of the Governor and Company of the Bank of England, kept for entering transfers of such stock, as they the said E. F. and G. H. do hereby respectively admit and acknowledge.

REPORT. *See Infant, Lunacy, &c.*

REVERSION. *See Contract for Purchase, Title.*

REVOCATION. *See Powers, Will.*

SALE. *See Auction, Contract for Purchase, Lunacy, &c.*

(565.) And whereas by an order of the ^{Order of Court directing sale.} said Court made in the said cause, and bearing date on or about the &c., it was ordered that the real estates of the said testator should be sold, by a proper person to be appointed by the said Master, at such time and place, and in such lots as the said Master should think fit.

(566.) And whereas in pursuance of the ^{Sale in pursuance of order of Court.} said order, the said testator's freehold estates were put up to sale in lots, before A. B., the person appointed by the said Master for that purpose, on the &c., at the &c., in the town of &c., and at the said sale, the said C. D., one of the defendants in the said cause, was declared the highest bidder for, and the purchaser of (amongst other lots) lot —, in the particulars of sale named, which said lot comprised the messuages or tenements, lands, and other hereditaments hereinafter particularly mentioned, and intended to be hereby released with their appurtenances.

(567.) And whereas certain parts of the ^{Sale of part of settled estates pursuant to power.} estates comprised in the said indenture of

settlement, have been sold in exercise of the said power for that purpose contained therein.

Sale of lands and investment of proceeds in the purchase of other property, and conveyance accordingly.

(568.) And whereas the said A. B. and C. D., in pursuance and exercise of the powers for those purposes contained in the said hereinbefore in part recited indenture of release, sold certain parts of the lands and other hereditaments therein comprised, and laid out the monies produced by the sale thereof, in the purchase of &c., and by indentures of lease and release, bearing date respectively the &c., the release being made or expressed to be made between &c., the said hereditaments were conveyed and limited to the said A. B. and C. D., and their heirs, to such uses, &c.

Expediency of sale.

(569.) And whereas there is not any power in the said recited will of the said A. B. to sell any part of the hereditaments and real estate given by the said will to the said C. D. and E. F., and their heirs, to the uses and in manner hereinbefore mentioned, and it would be very advantageous and for the benefit of the said G. H., and all other persons beneficially interested, and to be interested, in the said capital and other mea-

suages, &c., in remainder or reversion, expectant on the estate for life of the said G. H., if the said messuages, &c., were sold, and the monies arising from the sale thereof were to be invested in the purchase of other estates to be settled to the same uses; but by reason of the limitations contained in the said will, the purposes aforesaid cannot be effected without the aid and authority of Parliament.

(570.) And whereas it would be for the benefit of the said A. B., and the several other persons entitled, or to become entitled, under the aforesaid limitations in the said will of the said C. D., deceased, to the said manors, messuages, &c., if the said manors, lands, and hereditaments, comprised in the schedule annexed to this will, were sold, and the monies arising from the sale thereof respectively were laid out, under the direction of the Court of Chancery, in the purchase of other estates, to be settled to the subsisting uses of the said indenture of release and settlement and will respectively, but by reason of the uses and limitations contained in the said indenture of release and settlement, and of the power of sale and exchange therein contained, not extending to the manors, mes-

Id. Another form.

suages, lands, and hereditament comprised in the first part of the schedule to this bill, and by reason of the uses and limitations contained in the said will of the said C. D., deceased, the purposes aforesaid cannot be effected without the aid and authority of Parliament.

That title cannot be made, or sale effected, without the aid of Parliament.

(571.) And whereas the said A. B. is ready and willing to complete the purchase of the said messuage and premises so contracted to be sold as aforesaid, at the said price of £—, upon having a good title made thereto; but such sale cannot be effected, nor a good title in fee simple made, without the aid and authority of Parliament.

SEISIN. *See Feoffment, Title.*

SEPARATION.

Agreement between husband and wife for separation.

(572.) And whereas unhappy differences have arisen, and do still subsist, between the said A. B. and C. his wife, and they now live separate and apart, and have resolved and agreed to continue in such state of separation.

(573.) Whereas unhappy differences have arisen, and do still subsist, between the said A. B. and C. his wife, and by reason of the same they have agreed to live separate and apart from each other; and the said A. B. hath agreed to allow and pay the said C. B., one annuity or clear yearly sum of £—, as and for her separate maintenance and support during the joint lives of herself and the said A. B., subject nevertheless to the proviso hereinafter contained.

(574.) Whereas unhappy differences have arisen, and do still subsist, between the said A. B. and C. his wife, and by reason of the same, they have agreed to live separate and apart from each other, during their joint natural lives, and the said A. B. hath agreed to secure to the said C. B. an annuity or yearly sum of £—, during their joint natural lives; and also a further annuity or yearly sum of £—, for her life, in case the said C. B. should survive her said husband, in addition to the provision made for her by the said settlement, executed previously to the marriage of the said A. B. with the said C. his wife; and the said annuities, respectively, are to be issuing out of, and charged and charge- Agreement
for separa-
tion, and to
allow an-
nuity to wife.

able upon, the freehold messuage, lands, and hereditaments hereinafter mentioned and described.

Agreement on separation to assign the paraphernalia of wife to trustees.

(575.) And upon the treaty and agreement for the future separation of the said A. B. and C. his wife, it hath been agreed that the said A. B. should assign to the said E. F. and G. H. all the clothes, wearing apparel, jewels, gold and other watches, rings, and ornaments of the person, trinkets and paraphernalia of her the said C. B., and which have been usually worn by her.

SETTLEMENT.

Marriage settlement.

(576.) Whereas by indentures of lease and release, bearing date respectively the &c., the release being made or expressed to be made between &c., (being the settlement made previously to, and in contemplation of, the marriage then intended, and which was shortly afterwards duly had and solemnized, between the said A. B. and C. his wife,) for the considerations therein mentioned, the messuages, &c., hereinafter particularly mentioned, and intended to be hereby granted

and released, with their appurtenances, were conveyed and limited unto and to the use of &c.

(577.) Whereas by indentures of lease and release, bearing date respectively the &c., the release being made or expressed to be made between &c.; and also by an agreement in writing, bearing date on or about &c., and made &c., (being the settlement and agreement for settlement made previously to and in contemplation of the marriage then intended, and which was shortly afterwards duly had and solemnized between &c.; and also by an indenture bearing date on or about &c., and made &c., and by a common recovery duly suffered before His Majesty's justices of the Court of Common Pleas at Westminster, in or as of — term, in the — year of the reign of &c., in pursuance thereof, and by force of a declaration of the uses of the said recovery in the said last-mentioned indenture contained, the mesuages, lands, and other hereditaments, firstly hereinafter particularly mentioned, and intended to be hereby appointed and released, with the appurtenances, were conveyed, limited, and assured, to the use, &c.

Settlement
and agree-
ment for set-
tlement, re-
lease, and
recovery.

Settlement
in pursuance
of articles.

(578.) Whereas by indentures of lease and release, bearing date respectively the &c., the release being made between, &c., (being a settlement made in pursuance of articles, bearing date the &c., made and entered into previously to and in contemplation of the marriage of the said A. B. with the said C. D.,) divers manors, collieries, coal mines, and other hereditaments therein mentioned, situate in the county of D., and whereof a common recovery was, before the execution of the said indentures of &c., suffered in the proper court of the said county, in pursuance of a certain covenant or agreement for that purpose contained in the said marriage articles, were settled, limited, and assured to the use, &c.

Power to
Jointure.

(579.) And it is, by the said indenture of settlement now in recital, declared that it should be lawful for me, the said A. B., when and as by virtue of the limitations in the said indenture contained I should be in the actual possession, or entitled to the receipt of the rents and profits of the said manors, messuages, farms, lands, and hereditaments firstly therein granted and released, or expressed and intended so to be, or to the im-

mediate freehold thereof, (certain parts of
which said manors, messuages, farms, lands,
and hereditaments are mentioned and com-
prised in the schedule hereunder written, or
hereunto annexed) by any deed or deeds, in-
strument or instruments in writing, with or
without power of revocation, to be by me
sealed and delivered in the presence of and at-
tested by two or more credible witnesses, or by
my last will and testament in writing, or any
codicil or codicils thereto, to be by me signed
and published in the presence of and to be
attested by three or more credible witnesses,
(subject as therein is mentioned) to limit or
appoint to, or to the use of, or in trust for,
any woman whom I might marry, for the life
of such woman for her jointure, and in bar
or without being in bar of her dower or
thirds at the common law, or by custom, or
otherwise, any annual sum or sums of money,
yearly rent-charge or rent-charges, not ex-
ceeding in the whole the clear yearly sum of
£—, of lawful money of Great Britain, to be
issuing out of, and charged and chargeable
upon, all or any part of the said last men-
tioned manors, farms, and other heredita-
ments, to be secured by such powers and

remedies by distress and entry and ~~percep~~
tion of the rents and profits of the same ~~pro~~
mises, and such term or terms of years,
without impeachment of waste, to take effect
after my decease, but subject and without
prejudice as aforesaid, and such limitations
or appointment to be made either before or
after such intermarriage as to me, the said
A. B., should seem meet. [See tit. "Uses."]

STOCK.

Title to
stock.

(580.) And whereas the said A. B. is entitled to the capital sum of £— three per cent. consolidated Bank Annuities, now standing in the joint names of the said C. D. and E. F., in the books of the Governor and Company of the Bank of England.

Title to di-
vidends of
stock.

(581.) Whereas the said A. B. is entitled for his life to the dividends and annual profits of a sum of £—, three per cent. consols, now standing in the joint names of C. D. of &c., and E. F. of &c., as trustees under a certain indenture of settlement, bearing date the &c.

Id. Another
form.

(582.) And whereas under and by virtue

of the will of A. B. of &c., bearing date the &c., the said C. D. is entitled for his life to the dividends and annual profits of the sum of £—, three per cent. consolidated Bank Annuities now standing in the joint names of the said E. F. and G. H.

(583.) And whereas the said sum of £—, which arose from the said sale of the said hereditaments and premises, hath this day been invested by the said A. B. and C. D., in the purchase of the sum of £— three per cent. consolidated Bank Annuities, in the joint names of the said A. B. and C. D., as they the said A. B. and C. D. do hereby respectively admit and acknowledge: and it hath been agreed between the said A. B. and C. D. that such trusts should be declared of the said stock as are hereinafter mentioned and declared.

Investment
in stock of
money aris-
ing from
sale of trust
property,
and agree-
ment to de-
clare trusts
of stock.

(584.) And whereas upon the treaty for the said marriage, it was agreed that the sum of £—, three and a half per cent. Bank Annuities should be transferred by the said A. B., and that the sum of £— three per cent. consolidated Bank Annuities should be transferred by the said C. D., into the joint names of the said E. F. and G. H., upon the

Agreement
on marriage
to transfer
stock to
trustees, and
transfer ac-
cordingly.

trusts and in manner hereinafter mentioned. And whereas in pursuance of the said agreement, they the said A. B. and C. D. have this day transferred the said respective sums of £—, three and a half per cent. Bank Annuities, and £— three percent. consolidated Bank Annuities into, and the same sums respectively are now standing in the joint names of the said E. F. and G. H., in the books of the Governor and Company of the Bank of England, kept for entering transfers of such stocks respectively, as the said E. F. and G. H. do hereby respectively admit and acknowledge.

Agreement
after mar-
riage to pur-
chase stock
to be invest-
ed in names
of trustees.

(585.) And whereas since the solemnization of the said marriage, the said A. B. hath agreed to purchase the sum of £— three per cent. consolidated Bank Annuities ; and that the same should be invested in the joint names of the said C. D. and E. F., upon the trusts, and to and for the intents and purposes hereinafter expressed and declared of or concerning the same.

Purchase of
stock in
names of
trustees,
pursuant to
agreement.

(586.) And whereas in pursuance and part performance of the said agreement on the part of the said A. B., he, the said A. B., hath purchased the said sum of £— three

per cent. consolidated Bank Annuities, and hath caused the same to be transferred unto, and the same is now standing in the joint names of the said C. D. and E. F., in the books of the Governor and Company of the Bank of England, as they the said C. D. and E. F. do hereby respectively admit and acknowledge.

(587.) And whereas the said A. B. hath previously to the execution of these presents transferred the sum of £— into the joint names of the said C. D. and E. F., in the books of the Governor and Company of the Bank of England, as they the said C. D. and E. F. do hereby respectively admit and acknowledge.

(588.) Whereas the several sums of £—, ^{id. Another} East India Stock, and £— three per cent. consolidated Bank Annuities, mentioned in the indenture indorsed on the first, second, and third skins of the within-written indenture, have been transferred into, and the same are now standing in the joint names of the said A. B. and C. D., in the books of the East India Company, and of the Governor and Company of the Bank of

Transfer of
stock.

^{form.}

England respectively, as they the said A. B. and C. D. do hereby respectively admit and acknowledge.

Sale of stock and payment of produce.

(589.) And whereas the said A. B. did, on the &c., at the instance and request of the said C. D., and for his accommodation, sell out and dispose of the sum of £— three per cent. consolidated Bank Annuities, then standing in the name of him the said A. B., in the books of the Governor and Company of the Bank of England, and the clear produce thereof, amounting to the sum of £—, was paid to, or received by, the said C. D., or by some person or persons for his use, as he the said C. D. doth hereby acknowledge.

Sale of stock and application of produce under an agreement that payee should secure to seller the transfer of the like sum on a certain day, and in the meantime pay the amount of dividends.

(590.) And whereas the said sum of £— three per cent. consolidated Bank Annuities, was sold out and disposed of, and the produce thereof so paid to or for the use of the said C. D. as aforesaid, under a previous agreement that the said C. D. should secure to the said A. B., his executors, administrators, and assigns, the transfer of the like sum of £— three per cent. consolidated Bank Annuities, on or before the &c., and in the meantime should pay unto him and

them the amount of the annual dividends and produce of the said stock in such manner as hereinafter is expressed.

(591.) And whereas the said A. B. and C. D., with the consent and approbation of the said E. F. and G. his wife, testified by this deed or instrument in writing, under their hands and seals, have sold out and disposed of the sum of £— three per cent. consolidated Bank Annuities, and the same annuities so sold have produced the clear sum of £— of lawful money of Great Britain; and the said sum of £— is intended to be invested in the purchase of the hereditaments hereinafter described.

Sale of stock
by trustees,
under power
in settle-
ment; pro-
duce to be
invested in
the purchase
of estates.

SUIT.

(592.) Whereas A. B. of &c., rector of the parish of &c., in or about — term last, exhibited his bill of complaint, in His Majesty's Court of Exchequer, against &c., praying for an account of all the titheable matters whatever (except corn, grain, and hay,) which the said parishioners respectively had on any lands situate within the said

Bill of com-
plaint.

parish, or the titheable places thereof in the year &c., and also of the money due from them to him for Easter offerings in such year, and that the same, or the value thereof respectively, might be decreed to be paid to him by the said parishioners, and to be continued to be paid in future.

Agreement to defend suit at joint expense.

(593.) And whereas the said A. B., C. D., &c., and other the inhabitants, parishioners, and occupiers aforesaid, have agreed to defend the said suit at their joint expense, and to contribute toward the expense thereof in proportion to the sums at which they shall respectively, from time to time, be jointly rated to the church and poor of the said parish.

Bill to enforce administration to copy-holds.

(594.) And whereas the said A. B. and C. his wife did, on the &c., prefer their bill of complaint, in the High Court of Chancery against the said E. F. and G. H., and I. K., lord of the manor of L., of which the said copyhold lands and hereditaments are holden, stating the title of the said C. B., and the conveyance and surrender made in trust for the said E. F., and prayed, for the reasons and causes therein alleged, that &c.

Bill and decree of foreclosure.

(595.) And whereas the said A. B. did

on the &c., exhibit his bill of complaint in the High Court of Chancery against the said C. D., in order to be paid the principal and interest due on the said mortgage, or in default thereof, that the said C. D. might stand absolutely foreclosed from all equity of redemption of and in the said mortgaged premises. And whereas by a decree or decetal order of the said Court, bearing date on or about the &c., and made in the said cause, it was ordered and decreed that the said C. D. should stand absolutely barred and foreclosed of and from all equity and right of redemption whatsoever, of, in, and to the said mortgaged premises.

(596.) And whereas the said suit and proceedings having become abated by the deaths of several parties, several bills of revivor and supplement were filed against the personal representatives or successors of such deceased parties; and by a decetal order made on &c., on the hearing of such bills of revivor and supplement, the said decree of &c., was ordered to be carried on and prosecuted against the several parties to those causes in like manner as was di-

rected against the parties in the original cause.

Id. Another form. (597.) And whereas the said suit and proceedings having become abated and defective from time to time by reason of the several matters and facts hereinbefore recited, several bills of revivor and supplement have been filed; and by several decretal orders made on the hearing of such bills of revivor and supplement, and the respective answers thereto, the said decree of &c., was ordered to be carried on and prosecuted against the several parties to such revived and supplemental causes respectively, in like manner as was directed against the parties in the original cause.

Agreement to dismiss bill.

(598.) And whereas it hath been agreed by and between the said parties to these presents, that immediately after the execution of these presents, the said bill so filed by the said C. B. against the said C. D. shall be dismissed with costs.

Agreement to dismiss suit on execution of bond.

(599.) And whereas it hath been agreed, that immediately upon the execution of the above-written bond or obligation, the said suit shall be no further prosecuted or pro-

ceeded in, but shall be dismissed out of the said court; and that the said parties shall take all proper steps to procure the same to be dismissed.

(600.) And whereas by an order made by Order of Court. &c., on the &c., in the said cause, [or, in a certain cause then depending in the High Court of Chancery, wherein A. B. was plaintiff, and C. D., defendant,] it was ordered that &c.

(601.) And whereas the said A. B. having Interlocu-tory order on motion. put in his answer to the said bills, his Honour the Vice-Chancellor did on or about the &c., on the motion of the plaintiff, order that the title deeds relating to the said estates should be deposited in the office of one of the Masters of the said court, and that it should be referred to the said Master to appoint a receiver of the rents and profits of the said estates and hereditaments.

(602.) And whereas the said Master by Report. his report in the said cause, bearing date on or about the &c., and made in pursuance of the said last-recited decree or order, certified that &c.

(603.) And whereas the said Master's re- Confirm-a-tion of re-port. port was by two several orders of the said

Court of Chancery made and pronounced in the said cause, on or about the &c., made absolute and confirmed.

Decree.

(604.) And whereas by a decree of the High Court of Chancery, made and pronounced on or about &c., in a cause wherein A. B. was complainant, and C. D. and E. F. defendants, it was ordered and decreed, among other things, that &c.

SURETY. *See Bond.*

Agreement
to enter into
covenant.

(605.) And whereas the said A. B. and the said C. D., at his request, have consented and agreed to enter into the covenant hereinafter contained on their part.

Agreement
to become
surety and
join in cove-
nant.

(606.) And whereas at the instance and request of the said A. B. the said C. D. hath agreed to become a surety for the said A. B., and to join in the covenant for the payment of the said annuity hereinafter contained.

SURNAME.

Direction by
will to as-
sume testa-
tor's name
and arms.

(607.) And it was by the said will declared that the person or persons for the time being

entitled to the said manors, lands, and hereditaments by virtue of the said will, should, at the times and in manner therein mentioned, take the name and use the arms of the said testator in manner therein mentioned. (a)

(a) We take this occasion to observe, that, if a person be desirous of changing his name by a licence from the crown, a petition embodying the facts of the case must be presented. This is prepared at the College of Arms. The expense of the licence, if under a will, or the directions in any deed, is ninety-four pounds, twelve shillings; if the application is voluntary, fifty-four pounds, twelve shillings; but, in the latter case, the grant of such licence will depend upon the circumstances of the case entirely. These sums have reference to a change of name only; if arms are added, the expenses are increased according to the circumstances of the case, and the stamp duties.

Lord Tenterden has said, "that a name assumed by the voluntary act of a young man at his outset into life, adopted by all who know him, and by which he is constantly called, becomes, for all purposes that occur to my mind, as much and effectually his name, as if he had obtained an act of parliament to confer it upon him." (5 B. & Ad. 344.) And in *Barlow v. Bateman*, (3 P. Wms. 65,) *Sir Joseph Jekyll* observed, "Surnames are not of very great antiquity; for, in ancient times, the appellations of persons were by their Christian names, and the places of their habitations, as Thomas of Dale, viz. the place where he lived. I am satisfied the usage of passing acts of parliament for taking upon

Assumption
of name and
arms accord-
ingly.

(608.) And whereas the said A. B. di-
within the time and in the manner prescribe

one a surname is but modern; and that any one may take upon him what surname, and as many surnames as he pleases, without an act of Parliament." The opinion of *Sir Joseph Jekyll* has not, however, been altogether approved of. "I am far from meaning to trench upon the reverence due to any assertion of that great man," observed *Lord Stowell*, "when I say that the solid grounds upon which this proposition of law is stated, do not appear to have occurred to him just at the moment of the delivery of that judgment, because the reasons stated in that report can hardly, I think, be deemed satisfactory to produce such a conclusion. It is stated that the reasons are, first, that surnames are not of very great antiquity. It is pretty well now established that surnames were fully in use, even among the common people, by the reign of Edward the Second, which is now five hundred years ago, a pretty reasonable period for the establishment of any legal usage. It is likewise observed, that, in ancient times, the appellation was by the christian names, and place of habitation: as *Thomas of Dale*, but which of *Dale* is, of itself, merely a surname, a *local* surname, certainly, but not less a surname on that account; for surnames were local, either taken from places of habitation, or descriptive from other circumstances that belonged to the individuals, to distinguish men who were not at all distinguished by christian names: They are, many of them, general appellatives. Christian names are scattered among the mass of the people with such profusion, that they convey little or no distinction; and the very introduction of the surname was to discriminate that, which was not before discriminated. It is ob-

by the said will, assume the name and bear the arms of C., and hath ever since continued to use and bear the same respectively.

(609.) And whereas by an act of Parliament made and passed in the — year of the reign of &c. intituled “An Act to enable Act of Parliament enabling devisee to assume the surname of testator. A. B. esq., and his sons, and the heirs male of their bodies, to take and use the surname of D., pursuant to the will of C. D., deceased,” the said A. B. and his sons, and the heirs male of their bodies, were authorised to take and use the surname of D. only, in compliance with and in performance of the provisions in the will of the said C. D., deceased.

(610.) And whereas the said A. B., now Letters patent enabling

served, too, by *Sir Joseph Jekyll*, that the usage of an act of Parliament for a name is but modern. Certainly it is, and so are acts for many other private family concerns, they are of modern introduction. But there has been a practice of great antiquity, that is, the grant of a licence for the assumption of a name, by the Crown, passing through one of its public offices. Certainly the ancient style of the ancient offices of the crown is of great authority upon such a subject.” (*Wakefield v. Wakefield*, 1 Hagg. Consist. Rep. 400, 401.) On the Origin of Surnames, see *Verstegan's Restitution of Decayed Intelligence*, pp. 241—312, ed. 1605, and *Camden's Remains*, pp. 106—157, ed. 1636.

~~one to assume surname and bear arms.~~

called C. D., shortly after the decease of the said testator, duly obtained letters patent from the crown, bearing date the &c., enabling him to assume and take upon himself the surname of D. only, and to bear the coat of arms of that family, and hath continued to use such surname, and to bear such coat of arms ever since, pursuant to the direction and condition in the will of the said E. D. deceased.

Id. Short form.

(611.) And whereas by virtue of His Majesty's licence, under his royal sign-manual, bearing date the &c., the said A. B. assumed and thenceforth used the name and title of &c.

SURRENDER. *See Merger.*

Contract for surrender.

(612.) And whereas the said A. B. hath contracted and agreed with the said C. D. for the absolute surrender to him the said C. D. of such of the said messuages, lands, and premises comprised in and demised by the said hereinbefore in part recited indenture of the &c., as are hereinafter particularly mentioned, for the residue of the said

term of — years therein, created by the same indenture of lease.

(613.) And whereas in order to enable them to carry the aforesaid contract for sale into execution, the said A. B. and C. D. are desirous that the said term of — years should be merged in the inheritance of the said premises so agreed to be sold, in order that the same may be discharged from the portions to be raised under the same term ; and E. F. and G. H. being satisfied that the said estates in the said county of M. are of more than sufficient value to answer the said portions, have agreed to surrender the said term to the extent aforesaid, and to release the said estates so to be sold from the aforesaid portions.

(614.) And by the said indenture now in recital, for the considerations therein expressed, the said A. B. did surrender unto the said C. D. and his assigns, the said lands and other hereditaments, and all other the premises comprised in the said term of — years, with their and every of their appurte- nances: to hold the same unto the said C. D. and his assigns for all the residue then to come of the said term of — years, to the in-

tent that the residue of the said term might merge and be extinguished in the reversion and freehold of the said hereditaments, and that the same might be absolutely freed and discharged from the said annuity of £— and the trusts of the said term of — years.

Covenant to
surrender
copyhold,
and in the
meantime to
stand seised
thereof, in
trust for
mortgagors.

(615.) And by the indenture now in re-cital, the said A. B., who was a trustee for the said C. D., covenanted to surrender certain copyhold hereditaments described in the first schedule to these presents, and hereby covenanted to be surrendered, to the use of the said E. F., his heirs, and assigns, according to the custom of the manor of C., of which the same copyhold hereditaments are parcel, and that until such surrender should be made by the said A. B., or his customary heir, and admittance of the said E. F. therein or thereto, the said A. B. and his heirs would stand seised of and interested in the said copyhold hereditaments, in trust for the said E. F., his heirs, and assigns, to permit him and them to hold and enjoy the same, and receive and take the rents and profits thereof, to his and their own use, subject nevertheless to the proviso for redemption in the said indenture contained.

(616.) And whereas by indentures of lease and release, bearing date respectively the &c., the release being made, or expressed to be made, between &c., and by a fine levied pursuant to a covenant contained in the said indenture of release all the freehold lands and hereditaments, hereinafter particularly mentioned and described, were conveyed and assured, and all the copyhold lands and hereditaments, hereinafter particularly mentioned and described, were covenanted to be surrendered, and the same have since been surrendered, to and to the use of the said A. B., his heirs, and assigns, in trust for the said C. D., his heirs, and assigns.

(617.) And whereas at a special court [*or, Surrender in court.* court baron] held in and for the manor of B., in the county of A., on the &c., the said C. D., duly surrendered into the hands of the lord, according to the custom of the said manor, all, &c., to the use of the said E. F., his heirs, and assigns, for ever, according to the custom of the said manor. (b)

(618.) And whereas the said A. B., on or *Surrender out of court.*

(b) If conditional only, add, "on condition nevertheless that, &c.," following the terms of the condition.

about the, &c., duly surrendered into the hands of the lord of the manor of B., in the county of A., by the hands and acceptance of D. E. and F. G., two of the customary tenants of the said manor, all &c., to the use, &c.

TERM OF YEARS. *See Assignment, Merger, Surrender.*

That estate
is subject to
a term,
which by
divers meane
assignments
hath vested
in trustee,
in trust for
reversioner,
and to at-
tend.

(619.) And whereas the pieces or parcels of land, and other hereditaments hereinbefore appointed and released, or intended so to be, are (together with other hereditaments) subject to the residue of a certain term of — years, created by a certain indenture, bearing date, &c., and made or expressed to be made between, &c., and which said term, as to the messuages and other hereditaments hereinbefore appointed or intended so to be, under or by virtue of divers mesne assignments and acts in the law, and ultimately by the said hereinbefore in part recited indenture of the &c., became vested in the said A. B., his executors, administrators, and assigns, for all the residue then

to come and unexpired of the said term of — years; in trust nevertheless for the said C. D., his heirs, appointees, and assigns, and to be assigned and disposed of as he or they should, from time to time, direct or appoint; and, in the meantime, to attend and wait upon the reversion, freehold, and inheritance (expectant upon the determination of the said term,) of and in the said freehold messuages, lands, tenements, hereditaments, and premises, in order to protect the same from and against all mesne incumbrances, if any such there were.

(620.) And whereas the said pieces or parcels of land and other hereditaments hereinbefore granted and released, or expressed and intended so to be, are, together with other hereditaments, subject to the residue of a certain term of — years, created by a certain indenture, bearing date on or about &c.; and which was in the hereinbefore in part recited indenture of &c., duly assigned unto the said C. D.; in trust, in the first place, for better securing the said annuity of £—, and subject thereto, in trust for the said A. B., his heirs, and assigns, and to be assigned and disposed of as he or they should,

That estate is subject to term which was assigned to trustee for annuitant, and subject to annuity, in trust for grantor, and to attend the inheritance.

from time to time, direct or appoint and in the mean time to attend the inheritance of the same premises.

That premises are subject to a term held in trust for securing mortgage money, and subject thereto for the reversioner.

(621.) And whereas the messuages or tenements, and other hereditaments hereinbefore particularly mentioned are subject to the residue of the said term of — years, created by the said hereinbefore in part recited indenture of &c., and the said fine levied in pursuance thereof, and which said term under and by virtue of the said hereinbefore in part recited indenture of lease and release of &c., became vested in the said A. B., for all the residue then to come and unexpired of the said term of — years; in trust, nevertheless, for the more effectually securing unto the said C. D., his executors, administrators, and assigns, the repayment of the said sum of £— and interest, and, after payment thereof, in trust for the person or persons entitled to the freehold and inheritance of the hereditaments therein comprised, and to be assigned and disposed of, as he or they should in that behalf direct or appoint; and, in the mean time, to attend and wait upon the reversion, freehold, and inheritance, expectant upon the determination of the said

term of — years, in the said messuages and hereditaments hereinbefore particularly mentioned, in order to protect the same from all mesne incumbrances, if any such there were.

(622.) And whereas the said close of land ^{Id. Another form.} and premises are subject to a term of — ^(Short form.) years, created by an indenture bearing date &c., and under an indenture bearing date &c., are vested in the said A. B., by way of mortgage, for securing to him £— and interest.

(623.) And whereas the said A. B. and C. D. are desirous that the residue now to come of the said term of — years, so far as the same comprises the pieces and parcels of land and other hereditaments hereinbefore granted and released, or expressed and intended so to be, should be assigned unto the said C. D., in trust to attend the inheritance of the same premises.

(624.) And whereas the said A. B. and C. D. are desirous that the residue now to come and unexpired of the said term of — years, should be assigned unto the said E. F., upon the trusts and in manner here-

Desire that term should be assigned to attend inheritance.

Desire of mortgagees that terms should be assigned.

inafter expressed or declared of or concerning the same.

Desire of
mortgagee
that several
terms should
be assigned.

(625.) And whereas the said A. B. is desirous that the said two several terms of — years and — years should, so far as the same respectively comprise the said two undivided sixth parts or shares of the said messuages, &c., by the said hereinbefore in part recited indenture of even date with these presents granted and released, be assigned to the said C. D. upon the trusts and in manner hereinafter expressed or declared of or concerning the same respectively.

Assignment
of term to
attend inhe-
ritance.

(626.) And whereas by divers mesne assignments and acts in the law, and ultimately by an indenture bearing date on or about the &c., and made &c., the manor and other hereditaments comprised in the said term of — years, with their appurtenances, became vested in the said A. B., for all the residue of the said term of — years; in trust for the said C. D., his heirs, and assigns, and to attend the reversion, freehold, and inheritance of the manors and other hereditaments therein comprised.

Assignment
of mortgage

(627.) And whereas by indenture bearing

date &c., and made or expressed to be made ^{money and term.} between &c., for the considerations therein mentioned, all that the said principal sum of £—, and the interest to become due thereon, together with all and singular the hereditaments and premises comprised in the said term of — years, with their appurtenances, were assigned and transferred unto the said A. B. and C. D., their executors, administrators, and assigns, as to the said hereditaments and premises, for all the residue and remainder then to come and unexpired of the said term of — years, subject nevertheless to the same equity of redemption that the same hereditaments and premises were subject to, under or by virtue of the said hereinbefore in part recited indenture of lease and release of the &c.

(628.) And whereas by an indenture bearing date on or about the &c., and made or expressed to be made between A. B. of the one part and the said C. D., of the other part in consideration of the sum of £— to the said A. B., paid by the said C. D., as therein mentioned, in full satisfaction and discharge of all principal and interest due on the said security, all and singu-

Assignment
of term to
trustee for
mortgagor,
loan having
been repaid.

lar the said freehold messuages or tenements and other the freehold hereditaments and premises hereinafter particularly mentioned and intended to be hereby released, with the appurtenances, were assigned and transferred unto the said E. F. his executors, administrators, and assigns, for all the residue then to come and unexpired of the said term of — years; in trust for the said C. D., his heirs, and assigns, to be from time to time assigned and disposed of, as he or they should direct, and, in the mean time, to attend and wait upon the freehold and inheritance of the same premises, in order to protect the same from all mesne incumbrances, if any such there should be.

Cesser of term.

(629.) And whereas the said A. B., departed this life many years ago, and upon her decease and payment of all arrears of the said jointure or annuity, the said term of ninety-nine years, so created as aforesaid, ceased and determined.

Id. Another form.

(630.) And whereas the estate now or late of A. B., in such and so many of the said leasehold lands as were held for a term of twenty-one years, is determined by the expiration of the said lease.

TITLE. *See Approval, Term of Years, &c.*

(631.) Whereas the said A. B. is seised Title to fee. of, or well and sufficiently entitled to the messuages, lands, and other hereditaments hereinafter particularly mentioned, and intended to be hereby granted and released, with their appurtenances, for an estate of inheritance in fee simple in possession, free from all incumbrances.

(632.) Whereas the said A. B. is seised to Id. Another form. him and his heirs in fee simple of and in the messuages, lands, and other hereditaments hereinafter particularly described, and intended to be hereby granted and released, with the appurtenances.

(633.) And whereas the said A. B. and C. D. are seised of or well and sufficiently entitled to the messuages, lands, and other hereditaments hereinafter particularly mentioned and described, and intended to be hereby granted and released, with the appurtenances, for an estate of inheritance in fee simple in possession, free from all incumbrances, in the shares or proportions following, that is to say, the said A. B. is seised of or entitled to seven undivided eighth parts Title to fee in undivided and unequal shares.

or shares thereof; and the said C. D. is seised of or entitled to the remaining one undivided eighth part or share thereof.

Title to fee under will, subject to incumbrances.

(634.) Whereas under or by virtue of the last will and testament of A. B. of, &c., the said C. D. is seised in fee simple of or otherwise absolutely entitled to the several manors, messuages, lands, and other hereditaments hereinafter particularly mentioned and described, and intended to be hereby granted and released, with the appurtenances, subject only to the payment thereout of several annuities, making together the aggregate sum of £—, and subject also as to such of the said hereditaments as are situate in the parish of C., in the county of D., to the payment of the sum of £— and interest, exclusively charged thereon, by virtue of certain indentures bearing date the &c.

Title to copyhold.

(635.) And whereas the said A. B. is seised of (d), or well and sufficiently entitled to the copyhold messuages and other heredi-

(d) This term as here used refers to the quantity of estate of the copyholder; but some employ 'possessed,' which refers to the quality of estate as to tenure. Either expression is correct, but which ever term is selected, it should be uniformly employed throughout the draft.

ments hereinafter mentioned, for an estate inheritance in possession to him and his heirs, according to the custom of the manor A., [or, of the several manors of which the same respectively are holden,] free from all cumberances.

(636.) And whereas the said A. B. is possessed of or entitled to the said piece or parcel of land comprised in and demised by the said indenture of lease, bearing date the &c., with the appurtenances, for all the residue of the said term of — years.

(637.) And whereas the said A. B., is possessed of or entitled to the messuage or dwelling-house hereinafter particularly mentioned, and intended to be hereby assigned, with the appurtenances, for the remainder of a term of — years, commencing on the &c., at the yearly rent, and subject to the covenants and agreements therein contained, and on the part of the lessee or tenant to be paid, observed, and performed.

(638.) And whereas the said A. B., the wife of the said C. B., and the said E. F. are the only children and next of kin of the said E. F., and as such the said C. B., in right of his said wife, and the said E. F. in his own right, are

possessed of, or entitled to, the said messuages, &c., for the residue and remainder yet to come and unexpired of the said term of — years.

Title of testator under lease, subsequently renewed under tenant-right. (639.) And whereas the said A. B. was at the date of his said will, seised of the lands and hereditaments comprised in the indenture of lease next hereinafter recited, for a life or lives, by virtue of a lease formerly granted thereof, and then subsisting, but since determined and duly surrendered. And whereas the said indenture of lease next hereinafter recited was obtained by virtue of the tenant-right, or right of renewal of the said A. B. (e)

Title to freeholds and leaseholds, subject to rent and covenants. (640.) And whereas the said A. B. and C. D. are seised of, or well and sufficiently entitled to, the freehold messuages or tenements, and other the freehold hereditaments in the ground-plan on the margin of these presents delineated, and therein coloured green, for an estate of inheritance in fee simple in possession; and the said C. D. is possessed of or entitled to the leasehold piece or parcel of ground and other the

(e) As to tenant-right of renewal, see Appendix, Note (E.)

sehold premises in the said ground-plan delineated, and therein coloured red, the residue of a term of — years from &c., subject nevertheless to the yearly rent of £—, and to the performance of the covenants on the part of the tenant or lessee to be observed and performed.

(641.) And whereas the said A. B. is possessed of, or well and sufficiently entitled to, the freehold messuages or tenements and other the freehold hereditaments, in the ground-plan on the margin of these presents delineated, and therein coloured yellow, subject nevertheless to a mortgage of the same premises to C. D. of &c., for securing the repayment of the principal sum of £— with interest; and is also possessed of or entitled to the leasehold piece or parcel of ground in the said ground-plan delineated, and therein coloured blue, for the residue of a term of — years from &c., subject nevertheless to the payment of a proportionate part of the annual rent of £—, and to the performance of the covenants on the part of the tenant or lessee to be paid, observed, and performed, and subject also to a mortgage of the same premises to the said C. D. for

Title to free-holds subject to mortgage, and to leaseholds subject to rent, covenants, and mortgage.

securing the said principal sum of £— and interest.

Title to free-holds and chattels.

(642.) Whereas the said A. B. is seised of, or well and sufficiently entitled to the messuage, lands, hereditaments, and premises, in the schedule hereunder written particularly mentioned, and intended to be hereby bargained, sold, and demised, with their appurtenances, for an estate of freehold and inheritance in fee simple in possession, free from all incumbrances; and is possessed of, or well and sufficiently entitled to, the pipes, lamps, and other articles mentioned in the said schedule, and intended to be hereby assigned, as his own proper chattels and effects.

Title to free-holds, copy-holds, and leaseholds, not distinguishable, subject to incumbrances.

(643.) And whereas the said A. B. is seised of, or well and sufficiently entitled to, the freehold parts of the several messuages, farms, lands, and other hereditaments, hereinafter particularly mentioned, and intended to be hereby granted and released, assigned, and covenanted to be surrendered, with their appurtenances, for an estate of inheritance in fee simple in possession, free from all incumbrances, save and except as appears by these presents; and is seised of, or well and suffi-

ntly entitled to, the copyhold parts of the id messuages, farms, lands, and other hereditaments, and the inheritance thereof to m and his heirs, according to the custom of the manor of A, of which the same are olden, free from all incumbrances, save and except as appears by these presents; and is possessed of, or well and sufficiently entitled to, the leasehold parts of the said messuages, farms, lands, and tenements, for all the residue now to come and unexpired of a certain term of — years therein, created by a certain indenture, bearing date on or about the &c., and made or expressed to be made between &c.

(644.) And whereas the said A. B., is tenant for his life of all &c., with their appurtenances.

(645.) And whereas under or by virtue of certain indentures of lease and release, bearing date &c., the release being made, &c., the said A. B. is tenant for his life, with remainder to the said C. his wife, for her life, of the several messuages, &c.

(646.) And whereas the said A. B. is now tenant for life in possession of all and singular the manors, messuages, lands, and heredita-

ments, firstly hereinafter particularly mentioned or referred to, under or by virtue of the limitations contained in the said hereinbefore in part recited indenture.

Title as tenant for life under will.

(647.) And whereas under or by virtue of the last will and testament of A. B. late of &c., bearing date, &c., and duly proved &c., and by reason of the death of C. D. without issue, the said E. F. became and is tenant for his life of &c., and is in the actual possession of the same, under the limitations contained in the said will.

Title as heir.

(648.) Whereas the said A. B., as the eldest brother and heir at law of the said C. B., deceased, is seised to him and his heirs in fee simple of all &c., hereinafter granted and released, or intended so to be.

Id. Another form.

(649.) And whereas the said A. B. departed this life some time in the month of — and before the said C. D. had attained his age of twenty-one years, leaving two children only, the said B. B. and C. B., him surviving, who thereupon became entitled, in equal shares and proportions, to the share or part of the said A. B. of and in the said messuages, lands, and hereditaments.

(650.) And whereas the said A. B., under or by virtue of the last will and testament of C. D., late of &c., is entitled in possession for the term of his life, with remainder to his first and other sons successively in tail male, to all and singular the real estates of the said C. D., deceased.

(651.) And whereas the said A. B. and C. B., the eldest brothers of the said B. B., having died without issue, the said F. B. became tenant in tail in possession of the mesuages, &c., under or by virtue of certain indentures of lease and release, bearing date respectively the &c., and made between &c.

(652.) And whereas under or by virtue of the will of the said A. B., the said C. D. became, on the death of the said B. B., his uncle, tenant in tail in possession of &c.

(653.) And whereas under or by virtue of the said will of the said A. B., and by reason of the death of the said C. D., the father, the said C. D. party hereto, is become seised of an estate tail in possession of and in one undivided moiety or half part of and in the plantations, lands, and hereditaments hereinafter released, or otherwise assured, or intended so to be; and by the law and

customs of the island of Jamaica is entitled to enlarge his estate tail into a fee simple, and is desirous of enlarging the same estate tail accordingly, and of limiting his moiety of the same plantation, lands, and hereditaments to the use of himself, his heirs and assigns for ever.

Title to re-
version of
freehold.

(654.) And whereas the said A. B. is seized of, or well and sufficiently entitled to, the reversion or remainder immediately expectant upon the decease of C. D., of the age of — years, or thereabouts, of and in the freehold lands hereinafter mentioned, and intended to be hereby released with the appurtenances, free from all incumbrances.

*Id. Another
form.*

(655.) And whereas by virtue of or under divers conveyances and assurances in the law, the remainder or reversion in fee simple, expectant on the respective determinations of the said several terms of, &c., of and in all and singular the lands and other hereditaments comprised therein, respectively, became vested in the said A. B.

Title to re-
version of
copyholds.

(656.) And whereas the said A. B. is also seized of, or well and sufficiently entitled to, the reversion or remainder immediately expectant upon the decease of the said C. D.,

and in the copyhold or customary messuages and other hereditaments hereinafter particularly mentioned and described, and tended to be hereby covenanted to be surrendered with the appurtenances, for an estate of inheritance to him and his heirs, according to the custom of the manor of A., in the county of B., free from all incumbrances.

(657.) And whereas the said A. B. having survived his father the said C. B., deceased, Title to ultimate remainder in fee. hath, under the ultimate limitation contained in the said indenture of release and settlement, become seised of the reversion and inheritance of the said settled estates, subject to the said contingent estates thereby limited prior thereto.

(658.) And whereas the said A. B. is entitled [*or, I the said A. B. am now entitled*] under the limitations hereinbefore mentioned, to the actual possession, and to the receipt of the rents and profits of the manors, messuages, farms, lands, and hereditaments, mentioned and comprised in the schedule hereunder written or hereunto annexed, being part of the manors, messuages, and other hereditaments comprised in the

said hereinbefore mentioned indenture of release.

Title of the King to advowson.

(659.) And whereas the King's most excellent majesty, in right of his crown, is seised of the perpetual advowson, right of patronage, and presentation of, in, and to the rectory of A., in the county of B., and the rev. C. D., clerk, is the present rector of and incumbent on the said last-mentioned rectory.

Title of bishop to advowson.

(660.) Whereas the said A., lord bishop of B., in right of his episcopal see, is seised or possessed of, or entitled to, the advowson or right of patronage and presentation of, in, and to the rectory and parish church of C., in the county of D.

Title of dean to rectory.

(661.) Whereas the very reverend A. B., doctor of divinity, dean of the cathedral church of L., is the present rector of the rectory and parish church of S., in the county of S., and the right reverend father in God, the honourable lord bishop of L. and C., is the ordinary of the diocese in which the said rectory and parish church is situate.

Title of dean to rectory and tithes.

(662.) And whereas the very reverend A. B., doctor of divinity, dean of the

cathedral church of S., is, in right of his said deanery, entitled to the parsonage or rectory of the parish and parish church of R. aforesaid, and to the tithe-barn, and to all tithes, as well great as small, arising within the said parish; and C. D., esq., is lessee of the said parsonage or rectory, tithe-barn, and great and small tithes, under a lease for three lives, granted by E. F., late dean of the said deanery.

(663.) And whereas A. B., esq., is lord of the manor of C. aforesaid, and the reverend E. F., clerk, is the vicar of the vicarage and parish church of C. aforesaid, and is possessed of, or entitled to, the advowson or right of presentation to the said vicarage, and is also endowed with the great tithes of the said parish.

(664.) And whereas the said A. B., clerk, prebendary of the prebend of C. aforesaid, in right of his prebend, is patron of one moiety of the vicarage and parish church of C. aforesaid, and is entitled to certain glebe lands, and one moiety of the great tithes within the said parish of C., consisting of corn, grain, and hay, to which said glebe and tithes C. D., esq., is entitled as lessee.

for three lives, under a lease to him granted by the said A. B.

Title of the King to lordship of manor.

(665.) Whereas the King's most excellent majesty, in right of his crown, is lord of the manor and borough of R. aforesaid, and as such is seised of or entitled to the soil of the commons and waste grounds in the said parish of A.

Title of archbishop to lordship of manors.

(666.) Whereas the most reverend father in God, C., lord Archbishop of Canterbury, in right of his see, is lord of the manors of L. and C., in the county of S. &c.

Title to rights of common.

(667.) And whereas A. B. and divers other persons are respectively the owners or proprietors of divers messuages, farms, lands, or tenements within the said parish of A., and in respect thereof are, or claim to be, entitled to rights of common, and to other rights and interests in, over, or upon the said commons and waste grounds.

Title to shares of mortgage-money, subject, as to part, to a life interest therein.

(668.) And whereas the said A. B. is entitled to one-sixth part or share of the principal sum of £—, now invested upon mortgage, in the joint names of C. D. of &c., and E. F. of &c.; and is also entitled, subject to the life estate of the said G. H. therein, to one-sixth part or share of the further sum

of £— now also invested upon mortgage, in the joint names of the said C. D. and E. F.

(669.) And whereas the said A. B. is entitled, as the only child and administrator of C. B., her late father, deceased, to the sum of £—, secured upon a certain piece of land or ground, situate and being at &c., by a certain indenture bearing date &c., and made &c., and also secured by two several bonds of the said E. F., dated respectively the &c., and which said mortgage, bonds, and premises were, by a certain indenture bearing date &c., and made between &c., duly assigned to the said C. B., deceased; and the said A. B. is also entitled to the further sum of £—, secured upon the said piece of land and premises by a certain indenture of further charge, bearing date &c., and made between &c.

Title, as administrator, to mortgage-money collateral-secured by bonds.

(670.) And whereas the said A. B. and C. D., as such trustees and executors as aforesaid, became entitled, by virtue of the said hereinbefore in part recited indenture of the &c., to the sum of £—, being the share and interest of the said G. H. of and in the said legacy or sum of £—.

Title under assignment to share of legacy.

(671.) And whereas the said A. B. and

Claim of title to legacy.

gacy, and
agreement
to compro-
misse same.

C. D. claimed to be entitled under and by virtue of the said hereinbefore in part recited indenture of the &c., to the sum of £—, as the share and interest of the said E. F. of and in the said legacy or sum of £—; but doubts having been entertained as to their title thereto, by reason of such assignment as aforesaid having been executed during the coverture (a) of the said E. F., it hath been agreed by and between the said A. B., C. D., and E. F., for the purpose of putting an end to such doubts, that the sum of £— shall be accepted and taken, by the said E. F., in full satisfaction and discharge of every claim which she might have to, or in respect of, the said sum of £—, and that the sum of £—, residue of the said sum of £—, shall be paid [*or, if stock, transferred*] unto the said A. B. and C. D.

Title to ship. (672.) Whereas the said A. B. is the owner or proprietor of a certain ship or vessel called the —, of the burden of — tons, now on her voyage to —, whereof C. D. is master.

Title to shares of ship. (673.) Whereas the said A. B. is the owner or proprietor of — undivided sixty-

(a) See ante, pp. 16, 17.

four parts or shares of and in a certain ship
or vessel called the &c. (b)

(674.) And whereas various objections ^{Objections to title.} were, on the part of the said A. B., taken to the title of the said C. D. to the aforesaid hereditaments and premises.

(675.) And whereas upon investigating the ^{Defect of title.} title to the said messuages, lands, tithes, and hereditaments, it appeared that as to the said tithes, the title is either defective or cannot be made good.

(676.) And whereas upon the investigation ^{Agreement to complete contract, vendor coven- nanting to perfect title.} of the title to the said hereditaments by the counsel of the said A. B., it was agreed that certain further information should be given; and it being necessary that several terms of years subsisting in certain parts of the said premises, but which were all attendant upon the inheritance of the said premises, should be assigned to trustees named by the said A. B. in trust for him; and it was also agreed that the said A. B. should ascertain in what persons the same terms were actually vested, and procure them to make and execute such assignment as the said C. D. should

(b) See tit. " Bill of Sale," art. (157,) p. 142, note.

devise or require. And whereas the said A. B. being unable immediately to comply with the said requisition, and the said parties being desirous of completing the said contract immediately, it was agreed that the said C. D. should be let into the immediate possession of the said hereditaments and premises, and that the purchase-money for the same, except the sum of £— part thereof, should be paid by him on the execution of a conveyance of the said premises by the said A. B., and upon his entering into such covenants for completing the said title, and procuring such assignments of the aforesaid terms as hereinafter mentioned; and that the said sum of £—, part of the said purchase-money, should be retained by the said C. D. until the said title should be completed and such assignments procured: And whereas in pursuance of such agreement the purchase-money for the said hereditaments, except the sum of £—, hath been paid by the said C. D. to the said A. B., which he doth hereby admit and declare; and the said hereditaments and premises, with the appurtenances, have been conveyed and assured by the said A. B. unto and to the use

of the said C. D., his heirs, and assigns for ever, and he the said C. D. hath been let into possession of the said premises.

TRANSFER. *See Mortgage, Stock, &c.*

—

TRUSTS. *See Disclaimer.*

(677.) And by the indenture now in re-^{Power to appoint new trustees.} cital, it was agreed and declared that if the said A. B. and C. D., or either of them, or any future trustee or trustees to be appointed as thereafter was mentioned should die, or be desirous of being discharged of and from, or refuse or decline to act in, the trusts thereby in them reposed, before the said trusts should be fully performed or discharged, then and in such case, and when and so often as the same should happen, it should be lawful to and for the trustees or trustee so declining to act, or the heirs, executors, or administrators of such of them so dying, by any writing or writings, under his or their hand and seal, or hands and seals, to be attested by two or more credible witnesses, from time to time, to nominate,

substitute, or appoint, any other person or persons to be a trustee or trustees in the stead or place of the trustee or trustees so dying or desiring to be discharged, or refusing or declining to act as aforesaid; and that when and so often as any new trustee or trustees should be nominated and appointed as aforesaid, all the said trust estates, monies, securities, and funds, should be thereupon, with all convenient speed, conveyed, assigned, and transferred in such sort and manner, and so as that the same should and might be legally and effectually vested in the surviving or continuing trustee of the same trust estates, monies, securities, and funds, and such new trustee jointly, or if there should be no continuing trustee, then in such new trustees wholly, to, for, and upon such and the same trusts, intents, and purposes, as were thereinbefore declared or expressed of or concerning the same trust estates, securities, monies, and funds, or such of them as should be then subsisting and capable of taking effect; and that every such new trustee or trustees should in all things act and assist in the management, carrying on, and execution of the trusts to which they should be

so appointed, as fully and effectually to all intents, effects, constructions, and purposes whatsoever, and should have and be considered as vested with such and the same powers and authorities, as if he or they had been originally, in and by the said indenture now in recital, nominated a trustee or trustees.

(678.) And by the indenture now in recital, it was provided that if the trustees in and by the said indenture nominated and appointed, or either of them, or any future trustee or trustees should happen to die, or be desirous to be discharged of and from, and refuse or become incapable to act in, the trusts hereinbefore expressed or declared, before the same trusts should have been fully performed and discharged, then and so often as the same should happen, it should and might be lawful, to and for the said A. B. and C. his wife, during their joint lives, and after the decease of either of them, then to and for the survivor of them, during his or her life, by any deed or writing to be by them, him, or her, sealed and delivered, in the presence of and attested by two or more credible witnesses, to nominate, substitute, and appoint

Power to ap-
point new
trustees, and
to revoke old
and limit
new uses.

any other person or persons to be a trustee or trustees in the place or stead of such trustee or trustees so dying, or desiring to be discharged, or refusing or becoming incapable to act as aforesaid ; and that when and so often as any such new trustee or trustees should be nominated or appointed as aforesaid, all the said trust estates, monies, and premises which should then be vested in the surviving or continuing trustee or trustees should be thereupon, with all convenient speed, conveyed, transferred, assigned, and assured respectively, according to the nature and tenure thereof respectively, in such sort and manner, and so that the same should and might be legally and effectually vested in the newly appointed trustee or trustees ; or, in case there should be no continuing trustee or trustees, then in such new trustee or trustees only, to the uses, upon the several trusts, and to and for the several interests and purposes thereinbefore created, expressed, or declared of and concerning the same, or such of them as should or might be then subsisting and capable of taking effect ; and that every new trustee or trustees should and might, in all things and in all respects, act and as-

t in the management, carrying on, and executing of the trusts to which he or they could be so appointed, as fully and effectually, and with the same power and powers, authority and authorities, as if such new trustee or trustees had been originally, by the said indenture nominated and appointed, and the said trustees of the same trust estates and premises, named in the said indenture of lease then were or would be enabled to do, or might or could have done, under or by virtue of the same or any other clause, power or proviso therein contained or implied, or otherwise, as if such original trustee or trustees had been then living and continuing to act under and in execution of the trusts, powers, and authorities reposed in, or reserved to them, in and by the said indenture now in recital; and that in order that such trust estates and premises might be legally and effectually conveyed to and vested in such new trustee or trustees jointly or solely, as thereinbefore is mentioned, it should and might be lawful to and for the person or persons nominating, substituting, and appointing such new trustee or trustees, under or by virtue of the powers or autho-

rities thereinbefore for that purpose contained, by any deed or deeds, instrument or instruments in writing, to be by them respectively sealed and delivered in the presence of and attested by two or more credible witnesses, to revoke, determine, and make void the uses, trusts, powers, and provisos in and by the said indenture of release, limited, declared, and expressed of and concerning the said trust estates and premises, or any of them, or any part or parts thereof respectively; and by the same, or any other deed or deeds, instrument or instruments in writing, to be sealed and delivered and attested as aforesaid, to limit, declare, direct, or appoint, any use or uses, estate or estates, trust or trusts, of the said trust estates and premises, or any of them, or any part or parts thereof respectively, which it should be thought necessary or expedient to limit, declare, direct, or appoint, for the purpose of conveying and vesting such trust estates and premises to or in such new trustee or trustees jointly or solely as thereinbefore is mentioned.

Desire to be
discharged
from trusts,
and agree-

(679.) And whereas the said A. B. and C. D. being desirous of being discharged

in the trusts reposed in them by the said ^{ment to ap-}
 indenture, have (with the approbation of the ^{point new}
 trustees.)
 id E. F. and G. his wife,) agreed to appoint
 e said I. K. and L. M. to be trustees in
 stead of them the said A. B. and C. D.:
 id whereas the said I. K. and L. M. have
 greed to accept the said trust.

(680.) And whereas the said A. B. is de- ^{Id. Another}
 sirs of being discharged of and from the
 trusts reposed in him by the said [or, the
 within written] indenture of settlement; and
 whereas the said C. D. hath requested the
 said E. F. to become a trustee in the place
 or stead of the said A. B. for the purposes
 mentioned in the said [or, the within written]
 indenture, and according to the power for
 that purpose therein contained, and herein-
 before recited, which the said E. F. hath
 consented to do.

(681.) And whereas the said A. B. is de- ^{Desire to}
 sirs of exercising the power given and re- ^{exercise}
 served to him by the said [or, within written] ^{power to ap-}
 indenture, by appointing new trustees in the ^{point new}
 stead or place of the said C. D. and E. F. ^{trustees.}

(682.) And whereas by indentures bear- ^{Appoint-}
 ing date the &c., and made or expressed to ^{ment of new}
 be made between &c., they the said A. B. ^{trustee.}

and C. D., in exercise and execution of the power for that purpose contained in the said hereinbefore in part recited indenture of settlement, did appoint the said E. F. to be trustee in the place or stead of the said G. H. for the purposes mentioned in the said indenture of settlement.

Appoint-
ment of
trustees.

(683.) And whereas the said A. B. and C. D. have been appointed and have consented to become trustees for carrying the said trusts into execution.

Death of old
trustees, and
appointment of
new.

(684.) And whereas the said A. B. and C. D. have departed this life, and by virtue of a power for that purpose contained in the said recited indenture of settlement, the said E. F. and G. H. have been appointed to be trustees in the stead and place of the said A. B. and C. D.

Acknowl-
gment of trust-
eeship.

(685.) And whereas the said A. B. and C. D. were trustees of the said term of — years, and of the said money thereby secured, in trust for the said E. F., his executors, administrators, and assigns, as they do hereby admit and acknowledge.

Acknowl-
gment by
deed-poll of
trusteeship.

(686.) And whereas by a deed-poll or instrument in writing, under the hand and seal of the said A. B., bearing date &c., he

the said A. B. did declare that the said sum of £—, secured by the said hereinbefore in part recited indenture, was not his own proper money, and that his name was inserted as a trustee only, in trust as to the sum of £—, part of the said sum of £—, for the said C. D., his executors, administrators, and assigns; and as to the sum of £—, the residue, in trust for the said E. F., his executors, administrators, and assigns.

(687.) Whereas the legal estate or interest of several manors, messuages, lands, tenements, and hereditaments, is or may be vested in the said A. B., solely or jointly with some other person or persons, for an estate of freehold and inheritance, or of freehold only, or for some term or terms of years, or other chattel interest, in trust for or for the benefit of some other person or persons, or for certain particular intents and purposes; and the legal estate or interest of or in certain sums of money, stocks, funds, and securities, or other personal estate, is or may be vested in the said A. B., in trust for, or for the benefit of, some other person or persons, or for certain particular intents and purposes.

That estates
and interests
are or may
be vested in
assignor as
trustee.

Agreement
to pay money
to trustees to
be held upon
such trusts
as will best
correspond
with the uses
of heredita-
ments.

(688.) And whereas it hath been agreed
that the said sum of £— should be paid into
the hands of the said A. B. and C. D., to be
held by them upon such trusts as will best
and nearest correspond with the uses to
which the hereditaments firstly hereinabove
particularly mentioned stood limited and set-
tled previously to the execution of the herein-
before in part recited indenture of the &c.

Declaration
of trust as to
moieties of
estates.

(689.) Unto and to the use of the said
A. B. and his heirs, as to one undivided
moiety or half part of the same heredita-
ments and premises, in trust for the said
C. D., his heirs, and assigns for ever; and as
to the other undivided moiety or half part
thereof, in trust for the said E. F., his heirs,
and assigns for ever.

Declaration
of trusts of
term to raise
pin-money.

(690.) And it was by the said indenture of
the &c., agreed and declared, that the said
A. B. and C. D., and the survivor of them,
his executors, and administrators, should
stand possessed of the said term of — years,
upon trust, by the ways and means therein
mentioned, to raise the annual sum of £—,
for the separate use of the said E. F., by
way of pin-money, during the joint lives of
the said G. F. and E. his wife.

691.) And it was by the said indenture **ther** agreed and declared that the said **B.** and **C. D.**, and the survivor of them, Declarations
of trusts of
term to raise
fines for re-
newal of
leases.

executors, and administrators, should and possessed of the said term of — years, **object to the trusts thereinbefore declared),** on trust to raise such monies (if necessary) for paying the fines, fees, and expenses of obtaining renewals of leases, as therein mentioned, and also to raise any annual sums to be accumulated for the purpose of paying off any monies to be raised for the payment of such fines, fees, and expenses.

(692.) And upon further trust in case the said **E. F.** should depart this life in the lifetime of the said **G. F.**, and there should be issue of the said marriage living at the time of her decease, one or more son or sons, who should live to attain the age of twenty-one years, to levy and raise from and after the decease of the said **E. F.**, and during the joint lives of the said **G. F.**, and each son of the said marriage, as from time to time should for the time being, be entitled under the limitations thereinbefore expressed, to the next estate in remainder, expectant upon the decease of him the said **G. F.**, of and in the manors, Declarations
of trusts of
term to raise
annual sum
for mainte-
nance,

hereditaments, and premises thereinbefore released or expressed, and intended so to be, and should have attained the age of twenty-one years, for the maintenance and support of such son, any annual sum or sum of money, not exceeding the clear annual sum of £—, which the said E. F. should notwithstanding his coverture, by will appoint, and for default of such appointment during the period or periods lastly thereinbefore mentioned, any annual sum or sum of money, not exceeding the clear annual sum of £—, which the said trustees or trustee for the time being should think proper, and to pay the said annual sum or sums, not exceeding £— or £—, as the case might be, to such son of the said marriage as should be, for the time being, entitled as aforesaid, and should have attained the age of twenty-one years, for his maintenance and support in manner therein mentioned.

Declaration
of trust (sub-
ject to pre-
ceding
trusts) to
permit the
rents of the
heredita-
ments com-
prised in
term to be
received by

(693.) And it was, by the said indenture of release of the &c., agreed and declared, between and by the parties thereto, that, subject to the trusts thereinbefore declared or referred to, the said A. B. and C. D., their executors, administrators, and

signs, should, from time to time, permit ^{next imme-}
 d suffer the rents, issues, and profits of ^{mediate re-}
 e said manors and lordships, hereditaments ^{mainder-}
 d premises, comprised in the said term of
 - years, or such part or parts thereof as,
 or the time being, should not be wanted for
 e purposes for which the same term was
 hereby created, to be had, received, and
 aken by the person or persons who, for the
 imbe being, under the limitations and trusts
 imited and declared by the said indenture,
 should be seised of or entitled to the next
 immediate estate or interest in remainder,
 expectant upon, or subject to the same term,
 for his or their own use and benefit.

(694.) And the trusts of the said term of <sup>Declaration
of trusts of
term for
raising por-
tions.
(Short form)</sup> years, thereby limited to the said A. D.,
 were declared to be for raising the sum or
 sums of money therein mentioned, for por-
 tions for the younger children of the said
 G. F. by the said E. his wife.

(695.) And it was thereby agreed and de- <sup>Declaration
of trust to
invest money
to arise from
sale, or be
received for
equality of
exchange or
partition, in
purchase of
heredita-
ments to be</sup> clared that when all or any part or parts of
 the manors and other hereditaments therein
 before released, or expressed and intended
 so to be, should be sold for a valuable con-
 sideration in money, or when any money

settled to uses of settlement. should be received for equality of exchange or partition, as therein mentioned, they to said A. B. and C. D., and the survivor of them, and the executors and administrators of such survivor, should, with all convenient speed, pay and apply the money received by them or him upon such sale or sales, or for equality of partition or exchange as aforesaid, in the purchase of other freehold manors or hereditaments in fee-simple in possession alone, or together with such copyhold or customary lands and hereditaments which might be convenient to be held therewith, or with any other of the premises settled as aforesaid, but subject to the restrictions therein mentioned, and during the time therein mentioned, with the consent of such person or persons as therein mentioned; and it was thereby further declared and directed that as well the manors, lands, and hereditaments to be purchased as thereinbefore directed, as the manors, lands, and hereditaments to be taken or received upon any such partition or exchange, as thereinbefore mentioned, should be respectively conveyed, settled, and assured, to such and the same uses, upon such and the same trusts, and to and

such and the same intents and purposes, and with, under, and subject to such and the same power, provisos, conditions, and decretations as should be subsisting of and in, upon and concerning, the manor and other hereditaments thereinbefore released or expressed, and intended so to be, or as near thereto as the tenures of the premises, and the deaths of parties, and other intervening accidents, would then admit.

UMPIRE. *See Arbitration.*

USES.

(696.) And whereas upon the rule of law, ^{Use upon use.} that a use cannot be raised on a use, (a) the said indenture of bargain and sale, contrary to the intention of the parties thereto, operated to vest the legal estate of the said messuages and hereditaments in the said A. B. and C. D., and their heirs, and all the uses expressly declared of the said messuages,

(a) See Sugd. Pow. 10; Sand. Usés, 92; Touch. 507.

lands, and hereditaments, gave a title only to mere trusts or beneficial interests.

Declaration
of uses to
prevent
dower.

(697.) To such uses, upon such trusts, for such intents and purposes, and with, under, and subject to such powers, provisos, agreements, and declarations, as the said E. F. should, by any deed or deeds, writing or writings, with or without power of revocation, to be by him sealed and delivered, in the presence of and to be attested by two or more credible witnesses, from time to time, direct, limit, or appoint; and for default of, and until such direction, limitation, or appointment, to the use of the said E. F. and his assigns during his life, with a limitation to the use of the said G. H. and his heirs, during the life of the said E. F., in trust for him the said E. F. and his assigns during his life, with remainder to the use of the said E. F., his heirs and assigns for ever.

Declaration
of uses by
reference.

(698.) To such and the same uses, upon such and the same trusts, and to and for such and the same ends, intents, and purposes, and with, under, and subject to such and the same powers, provisos, conditions, and agreements as were in and by the said

reinbefore in part recited indenture of
ttlement of the &c., limited, expressed,
clared, and contained, of and concerning
e messuages and other hereditaments
erein comprised.

(699.) To the use of the said A. B., and
is assigns for life, with remainder to the use
f the said C. D. and E. F., during the life
f the said A. B., and their heirs in trust to
preserve contingent remainders, with re-
mainder to the use of the said G. H. and
I. K. their executors, administrators, and
assigns, for the term of — years, with re-
mainder to the use of the first, second, third,
and every other son of the said A. B. by the
said C. B., successively in tail general, with re-
mainder to the use of the daughters of the
said A. B. by the said C. B., as tenants in
common in tail, with cross remainders be-
tween them, with remainder to the use of the
right heirs of the said L. M.

(700.) To the use of the said A. B. and
his assigns during his life, with remainder
to the use of the said C. D. and E. F., and
their heirs during the life of the said A. B.,
in trust to preserve contingent remainders,
and from immediately after the decease of

Declaration
of uses in
strict settle-
ment.

Limitation
of rent-
charge by
way of join-
ture, and of
term to se-
cure same.

the said A. B., to the intent and purpose that the said G. H. and her assigns should during her life, receive a yearly rent-charge of £—, for her jointure, and subject thereto and to the powers for securing the same, to the use of the said I. K. and L. M., their executors, administrators, and assigns, for the term of — years, upon trust to secure the same rent-charge with proviso for cesser of the said term of — years, on performance of the trusts thereof, and after the determination of the said term of — years, to the use &c.

VALUATION.

Survey and valuation of estates.

(701.) And whereas the said A. B. and C. D. by their certificate under their hands, bearing date the &c., did certify that they had proceeded carefully to survey and value the said estates, and did fix and ascertain such estates, including all the timber growing thereon, to be of the fair and full value of £—.

Valuation of buildings and ascertainment of compensation.

(702.) And whereas the erections and buildings in and by the said agreement directed to be valued, have accordingly been

ued, in the manner thereby directed, at sum of £—, and the compensation there-directed to be made, as aforesaid, hath been in like manner fixed at the sum of £—, and the said several sums of £— and £—, make together the aggregate sum of £—.

(703.) And whereas the said timber trees ^{valuation of timber.} have been valued at the sum of £— and the said A. B. and C. D. are satisfied with such valuation.

(704.) And whereas the timber, pollards, ^{Id. Another form.} and other trees on the lands purchased, or agreed to be purchased, by the said A. B., as aforesaid, have been valued at the sum of £—, and the said A. B. and C. D. are satisfied with such valuation.

(705.) And whereas the said messuage, ^{valuation of copartner-ship pro-erty.} buildings, and premises, comprised in the said hereinbefore in part recited indentures of &c., (being the premises where the said co-partnership trade was carried on up to the time of the dissolution thereof,) together with the stock in trade, have been valued at the sum of £— (that is to say) the said messuages, buildings, and premises, at the sum of £—, and the said stock in trade at the sum of £—.

WARRANT OF ATTORNEY.

Warrant of attorney and judgment. (706.) And whereas for the further securing the said sum of £— the said A. B. duly executed a certain deed-poll, or warrant of attorney, bearing even date with the said lastly hereinbefore in part recited indenture, thereby authorizing and empowering certain attorneys in his Majesty's Court of King's Bench, at Westminster, to confess judgment against him the said A. B. in an action of debt, at the suit of the said C. D., for the sum of £—, and costs; and judgment was afterward duly entered up thereupon accordingly as of — term in the — year of the reign of &c., [or, on the — day of — in the year of our Lord &c. (b)].

WILL. *See Probate.*

Will of free-hold. (707.) Whereas A. B. late of &c., being, at the date of his will hereinafter recited, and

(b) By one of the recent rules made by the Judges of the Common Law Courts (H. T. 4 W. IV. Rule 3.) it is provided that, "All judgments, whether interlocutory

om thenceforth to the day of his death, (c)
ised in fee simple of, or otherwise well en-

: final, shall be entered of record of the day of the month and year, whether in term or vacation, when gned, and shall not have relation to any other day."

(c) "Although a will is a future disposition, revocable by the testator, and is not completed, and can pass to estate until after his death, yet, unless by means of the doctrine of election, it can affect no freehold estate but such as he is entitled to at the time of making his will. Therefore, if he devise all such estates as shall belong to him at the time of his death, the devise is imperative with respect to any lands he may acquire subsequently to the date of his will, except so far as it may, according to a recent decision, (*Churchman v. Ireland*, 1 Russ. and M. 250,) raise a case of election against the heir. This rule has been attributed, by Lord Coke, to the word 'having' in the statute of wills; by Lord Chief Justice Trevor, to a design of the legislature, in passing the statute of wills, to give a power of disposition similar to that which had been taken away by the statute of uses; and by Lord Mansfield, to a devise being in the nature of a conveyance by way of appointment of particular lands to a particular devisee. This inconvenient distinction is peculiar to the laws of England. By the Roman laws, a testament was the institution of an heir, who should succeed to the estates left by the testator. The power of testamentary disposition over personal property, is governed by the rules of the Civil Law; and, therefore, a testator can bequeath any leasehold or other personal estate to which he may be entitled at the time of his death." *Fourth Rep. of the Real Prop. Com.* 24. This difference between wills

titled to, the messuages, lands, and other hereditaments, hereinafter particularly mentioned, and intended to be hereby granted and released with their appurtenances, duly made, signed, and published his last will and testament in writing, bearing date on or about &c., and thereby gave and devised his freehold estates situate &c., with their appurtenances, unto his son, the said C. B., his heirs and assigns for ever.

Will of personality.

(708.) And whereas the said A. B. duly made, signed, and published his last will and testament in writing, bearing date on or about the &c., and thereby gave and bequeathed &c.; and the said testator thereby appointed the said C. D. and E. F. executors of his said will.

*Appoint-
ment of exe-
cutors.*

(709.) And whereas the said A. B. duly made, signed, and published his last will and

of real and of personal estate has introduced a corresponding difference in the Recitals: in the former, the fact of ownership, at the date of the will, is stated, but in the latter, it is not. And we may add, that as a will of personality, must be authenticated by probate, it is proper, in reciting such a will, to associate with it the recital of Probate; but this is not necessary in a will of realty.

testament in writing, bearing date &c., and thereby appointed C. D. and E. F. executors of his said will.

(710.) And whereas the said A. B. duly made, signed, and published a codicil in writing to his said will, bearing date &c., and thereby revoked the appointment of the said C. D. to be one of the executors and trustees of his said will, and nominated and appointed the said D. D. to be an executor and trustee in the room of the said C. D.

Revocation
of appoint-
ment of exe-
cutor and
nomination
of substitute.

(711.) And whereas the said A. B. duly made, signed, and published a codicil in writing to his said will, bearing date, &c. And whereas the said A. B. departed this life, on or about &c., without having altered or revoked his said will, save by his said codicil, and without having altered or revoked his said codicil; and the said will, with the codicil annexed, was, on or about, the &c., duly proved by the said C. D. and E. F. in the — court of —: [See tit. "Probate."]

(712.) And whereas the said A. B. duly made, signed, and published his last will and testament in writing, bearing date &c., together with several codicils thereto, and by

will and se-
veral codi-
cils, one of
the codicils
containing a
devise of real
estate.

one of the said codicils bearing date &c., and duly executed and attested for the devise of real estates, gave and devised &c.

That codicil amounted to a republication of will.

(713.) And whereas the said A. B. did on or about &c., add a codicil to his said will, and the said codicil is duly executed and attested for the devise of lands of inheritance, and as it is apprehended amounted to a republication of the said will.

Codicils not affecting will of realty.

(714.) And whereas the said testator made several other codicils to his said will, but without affecting the disposition hereinbefore mentioned to have been made of his said real estates.

Codicil without revoking or altering will in before mentioned particulars, but bequeathing additional annuity.

(715.) And whereas the said testator afterwards duly made, signed, and published a codicil in writing to his said will, bearing date &c., without revoking or altering his said will in the respects aforesaid, but bequeathing an additional annuity as therein mentioned.

Devise by residuary clause of will.

(716.) Whereas A. B. late of &c., being &c., duly made &c., bearing date &c., and thereby (after certain specific dispositions, none of which comprised the pieces of land and other hereditaments hereinafter de-

ribed,) gave and devised all the rest, residue, and remainder, of his real estate whatsoever, in England or elsewhere, unto c.

(717.) And whereas the said A. B. did not, and by his said will, make any devise or disposition of his legal estate and interest in the said messuages, lands, hereditaments, and premises, so mortgaged to him as aforesaid ; and the same did, upon the decease of he said A. B., descend upon and become vested in the said C. B., as his eldest son and heir at law.

That will did not contain any devise of estates held in mortgage.

(718.) Whereas since the date and execution of my will, I have purchased from the devisees in trust named in the will of A. B., all that &c., and the same has since, by a certain indenture, bearing date on or about the &c., been duly conveyed to, or in trust for me. And whereas I have, since the date and execution of my said will, contracted with the devisees in trust named in the will of the late A. B., deceased, for the purchase of &c. And whereas I am desirous of devising the said &c., to the uses, upon the trusts, and to and for the intents and pur-

That testator has purchased and contracted to purchase certain hereditaments which he desires to devise.

poses hereinafter expressed or declared or concerning the same. (d)

*Lapsed de-
vise.* (719.) And whereas the said A. B. departed this life in the lifetime of the said C. D., whereupon the contingent devise, so made to the said A. B. as aforesaid, in and by the said hereinbefore in part recited will, became lapsed.

Will (verba-
tis) and
agreement
to confirm
same.

(720.) Whereas the said A. B. duly made, signed, and published his last will and testament in writing, bearing date &c., and which said last will and testament is in the words, or to the purport and effect following, (that is to say,) &c. And whereas the said A. B. departed this life on or about &c., without executing any other testamentary disposition than the last will and testament hereinbefore set forth, leaving the said C. B. his widow, and the said D. B. and F. B. his only children, him surviving. And whereas the said D. B. and F. B. being well convinced that the said will hereinbefore set forth is the last will and testament of the said A. B., and that the same was executed and

(d) See ante, p. 441, note.

ested in such manner as is by law required for rendering valid the devises of real estates, have agreed to ratify and confirm the same.

(721.) And whereas the said A. B. and . B., being satisfied that it was the intention of their mother to have altered her will, or the purpose of giving to the said E. B., or his children, some share or interest in the said messuage or tenement and lands, they are desirous, in consequence of the love and affection they bear towards their said brother and his children, to settle the said messuage or tenement and lands upon the trusts hereinafter declared concerning the same.

(722.) Whereas the said A. B. departed this life on or about the &c., and in his lifetime a certain instrument or writing was prepared wholly in the hand-writing of the same A. B., purporting to be his last will and testament, and such instrument was in the words or to the effect following, (that is to say,) &c.: And whereas the said recited instrument or writing was propounded to the proper ecclesiastical court as a will, but the court declined or refused to treat the said

Desire to effectuate supposed intentions of testatrix.

That paper was propounded but not admitted to probate.

paper as complete or testamentary, (e) and therefore the said C. D. hath obtained letters of administration of all the goods, chattels and credits of the said A. B., deceased, from the Prerogative Court of the Archbishop of Canterbury, as by letters of administration, bearing date &c., will, on reference thereto, appear.

Agreement
that paper
shall be con-
sidered as
testamen-
tary.

(723.) And whereas the said C. D. and E. F. are desirous and have determined that the same instrument or writing should be considered as the will of the said A. B., deceased, and should be observed and performed in all respects as if the said instrument or writing had been established, or could be established, as the will of the said A. B., deceased.

Agreement
to put an end
to doubts as
to effect of
devises.

(724.) And whereas the said A. B., the testator, was not at the date of his will, or at the time of his decease, possessed of or entitled to any close of land containing &c., called &c., nor of any close of pasture-ground, containing &c., called B., but the said tes-

(e) As to what is sufficient to entitle a paper to probate, see Appendix, Note (F.)

or was, at the respective times aforesaid, subject to the residue of a certain term of —
ars, created therein and hereinafter as-
gned, entitled to one undivided third part,
id to two undivided third parts, of the re-
aining two undivided third parts, of and in
certain close of land, containing &c., or
ereabouts, called A., and of and in a cer-
tain close of pasture-ground containing &c.,
r thereabouts, called C., adjoining the said
st-mentioned close, and heretofore forming
art thereof, and of and in a certain close
ontaining &c., or thereabouts, called B., and
which said last-mentioned piece or parcel of
and, called B., is believed to have heretofore
formed part of the said field, called or known
by the name of A.: And whereas doubts
have been entertained as to the effect of the
divises so made to or in favour of the said
C. D., E. F., and G. H., as aforesaid, by the
said hereinbefore in part recited will of the
said A. B., deceased, and, in order to put
an end to all such doubts, it hath been agreed,
by and between the said C. D., E. F., and
G. H., that the said C. D. and E. F., to-
gether with all other necessary parties, should
release and convey to the said G. H., his

heirs, appointees, and assigns, all their estate, right, title, and interest, in and to the said close of land, containing &c., or thereabouts, so that the entirety thereof should become absolutely vested in the said G. H., and that he the said G. H., in consideration of such release and conveyance, and of the sum of £—, should, together with all necessary parties, release and convey to the said C. D. and E. F., their heirs, appointees, and assigns, or as they should direct or appoint, all his and their estate and interest in and to the said several closes of land, called respectively A. and C., in order that the entirety thereof should become absolutely vested in the said C. D. and E. F., as if the same had been devised to them by the said will of the said A. B.

WRIT.

Extent in
chief, and in-
quisition
finding
debtor pos-
sessed of a
term subject
to incum-
brances.

(725.) And whereas a writ of extent hath issued against the said A. B., at the suit of our sovereign lord the King, and tested the — day of —, in the year of the reign of &c., and an inquisition hath been taken

er the said writ of extent against the
l A. B., upon which he was found to be
seased (amongst other things) of the re-
ue of the said term of — years, of and in
said piece or parcel of ground and he-
ritaments, subject to the said annuity of
—, and also subject to a certain indenture
mortgage in the said inquisition set forth,
d which said term the sheriff did there-
on seize into the King's hands.

(726.) And whereas a writ of extent hath <sup>Extent in
aid.</sup> aimed against the said A. B., at the suit of
ur sovereign lord the King, in aid of C. D.,
nd tested &c.

(727.) And whereas a writ of extent hath <sup>Extent in
chief in the
second de-
gree.</sup> sued against the said A. B., at the suit of
ur sovereign lord the King, founded upon
n inquisition taken under a writ or writs
f extent, issued against C. D., and tested
tc. (f)

(728.) And whereas no further proceed- <sup>That extent
hath not
been a-
moved, debt
remaining
unpaid.</sup>
ngs have been had or taken under the said
writ of extent; but the King's hands have

(f) To show the commencement of the lien, the finding of the debt may be stated thus: "on which inquisition it was found that the said A. B. was then indebted to the said C. D. in the sum of £—."

not been amoved from the said term, hath the debt in respect of which the writ of extent issued been paid by the A. B., or the original debt of the said C. D. been fully satisfied.

*Fieri facias
in bill of sale
by sheriff.*

(729.) Whereas by virtue of His Majesty's writ of *fieri facias*, issued out of His Majesty's Court of King's Bench, Westminster, to me directed and delivered, for levying the sum of £— on the goods and chattels of C. D., which A. B. in the said court hath recovered against him, as by the said writ, returnable on &c., may more at large appear, I have taken into my hands the several goods and chattels of the said C. D. hereinafter mentioned, that is to say, &c., which by good and lawful men have been valued and appraised at the sum of £—.

*Id. Another
form.*

(730.) And whereas the said sheriff, on &c., received a writ of *fieri facias* issued out of His Majesty's Court of King's Bench (g)

(e) The form above given supposes the *fieri facias* to have issued out of the King's Bench; but it has not been thought necessary to introduce any recital of such a writ from the other courts, as the variations would be

Westminster, whereby the said sheriff was commanded that of the goods and chattels the said A. B., in his bailwick, he should use to be made £—, which the said C. D., then in His Majesty's court before him at Westminster, recovered against the said A. B. for his damages which he had sustained, as well on occasion of the non performance of certain promises and undertakings, as, a certain promise and undertaking,] then lately made by the said A. B. to the said C. D., as for his costs and charges by him about his suit in that behalf expended, whereof the said A. B. was convicted, and that the said sheriff should have that money before His Majesty at Westminster on &c. [*the return day,*] to be rendered to the said C. D. for his damages aforesaid; and by indorsement upon the said writ, the said sheriff was directed to levy the whole [*or, £—,*] besides sheriff's poundage, officer's fees, and all other incidental expenses.

extremely slight. The form can be easily adapted to the case of a writ in *debt*, *covenant*, &c., following the language of each writ.

Execution of (731.) And whereas the said sheriff ex-
writ, and cuted the said writ of *fieri facias*, and levied
sale under it. by virtue thereof, amongst and together with
other things, all and singular the term and
interest of the said A. B., under and by virtue
of the said hereinbefore recited indenture
of lease: and whereas the said sheriff
on the &c., caused the said term and interest
of him, the said A. B., under the said indenture
of lease, to be put up for sale at
&c., due notice of the time and place having
been previously given, and the said E. F.
was then and there declared the highest
bidder for the same, at or for the price or
sum of £—.

APPENDIX.

APPENDIX.

Note (A) p. 35:

LECTURE ON RECITALS.

[*By the late Professor J. J. Park.*]

RECITALS is the term by which conveyancers designate, not only those portions of drafts which are, properly speaking, recitals, namely, which recite or rehearse former instruments; but also those portions of them which state or allege the facts which are material to the transaction, and which equity draftsmen would more accurately call statements or stating parts.

Now the first thing is to get at some concise and comprehensive principle to which we can resort to determine what ought to be recited.

Some persons satisfy themselves that they understand reciting, because they know what they usually recite; in other words, they satisfy themselves to be mere machines, and to act automatically, instead of being rational agents, and insisting upon knowing of themselves the reason of what they do. Now I dare say there are no such persons among us, and that you would be all prepared to give an answer to the question, what is the principle of reciting? and that answer would probably be, "the principle is to recite just so much as is necessary to show the situation and character of all the *actores fabulae*, and to explain the action which is going to be performed." In other words, the recitals are to do, in some way or other, that which the *descriptio dramatis personæ*, which you sometimes see prefixed to a play, is to do for the action of the play,—introduce the actors, show who and what they are going to be about. But the situations and characters of parties with which we have most frequently to do in conveyancing are those which relate to their rights and interests in property; and the prevailing habit of conveyancers is, instead of stating directly the circumstances in question, as, for instance, that A. and B. are trustees for sale under a settle-

ment of such a date, to recite or rehearse so much of the instrument conferring that character as will be necessary to show distinctly the character itself, and the circumstances or modifications with which it is attended.

I said that this is the prevailing habit of conveyancers, but it is not the universal habit. Sometimes the result only is stated; but those cases are so rare that they can scarcely be put higher than as exceptions to the rule. But the question is, what is the principle of these exceptions? for there is, or ought to be, a reason for every thing.

Before we dispose of this question, it will be as well to make one preliminary observation, which it will be necessary occasionally to refer to. In reciting there are two different things that you are to direct your attention to. First, The making your recitals sufficiently explanatory of the present transaction, taken by itself, so that any one who reads the draft, without any other papers, may be able to collect all the facts which are necessary to the complete understanding of the transaction. Secondly, The consideration that you are preparing one of a series of instruments which constitute the future abstract of title, and therefore concerned to put upon the abstract, by way of recital, all intermediate facts and circumstances since the last deed, which are necessary to the concatenation and derivation of title; so that in proceeding from deed to deed on the abstract one may, with the help of recitals, have a complete chronological history of the title.

Having premised this, we will proceed to consider the occasions on which, in one case, the instrument—the causative process—is itself stated, and in other cases, the result only.

When the last conveyance was, we will say, to uses to prevent dower, and we are going to convey under those uses, it would not do to state merely the result, and say that "the lands stand limited to the usual uses to prevent dower," because there are many minute variations in the forms of uses to prevent dower, as used by different practitioners, particularly as to the mode of executing the power, and no one would know what the exact uses were. But when the direct result of a former deed or instrument is one or more very simple fact or facts, which contain within themselves all their own consequences, without looking further into the language or frame of that instrument, we commonly state the result, without reciting the instrument.

Thus we recite or state that the vendor is seised to him and

his heirs in fee-simple, or (if the case be so) to him and his heirs in fee-simple, subject to the title of dower of the said A. his wife, and so forth.

Nothing could be here gained by reciting the instrument, because, if the man is seised in fee, we do not want to know the mode of assurance, or the words of limitations, under which he became so seised.

It is perfectly immaterial whether the conveyance was to him, or to another person to his use, &c., or whether the limitation was to him and his heir, or to him, his heirs, and assigns.

Whenever, therefore, the simple result of the last conveyance or will is to make the vendor seised in fee, it is unnecessary to recite that conveyance or will itself; but you content yourself to state the result. In this case the abstract would gain nothing whatever by the recital of the last deed or will, and the conveyance itself does not require it to explain its own operations, as it does when the last conveyance was to uses to prevent dower. But when any facts have taken place subsequently to the last deed or will, which have altered the state of the title, although the result may then be (namely, at the time you are preparing your draft,) merely that the vendor is seised in fee, so that the mere recital or statement of that would sufficiently explain or sanction the draft, yet it is proper to recite the former deed or will, in order to introduce the recitals of the subsequent facts, which recitals are essential to the future abstract of title, being the proper means of getting those facts stated upon the abstract.

Thus if the property had been devised to one for life, remainder to another in fee, and the tenant for life be dead, you recite the will and the death of the vendor for life on such a day, because if you were merely to recite that the vendor was seised in fee, there would be nothing hereafter on the abstract to show what was become of the estate for life.

So if a descent have taken place subsequent to the last conveyance or will, you recite the conveyance or will and the descent, in order to put the latter fact upon the future abstract. Again, if a late owner made a will, devising the estate to A. B. in fee, and that devise lapsed by the death of A. B. in his lifetime, and the estate consequently descended to the heir at law, you recite all these facts, to put the requisite explanation upon the abstract, and to state the fact that A. B. did die in the lifetime of the testator.

There are very few other results of instruments besides that of a seisin in fee that can be properly stated merely by naked averment.

This is, however, sometimes done, when brevity is required with regard to estates for life, estates tail, &c., but in such cases, as a particular estate must have been created by some instrument, it is the almost invariable practice to refer to the instrument, even though it is not recited. Thus you recite that "under and by virtue of the last will and testament of A. B., bearing date &c., the said W. K. is tenant for his own life, of &c., or tenant in tail male &c. Where, however, we are going to act *materially* upon the particular estate thus created, it is in general the more satisfactory plan to recite the instrument creating it substantively, setting out so much of the language as is necessary to enable a lawyer to form his own opinion upon the effect of the limitation, instead of calling upon him to take another man's conclusion upon trust. I said where we are going to act materially upon the particular estate, and this brings us to another distinction, namely, whether the *result* of the instrument in question is the very matter upon which you are going to act, and which is therefore of the essence of the present transaction, or whether it is something merely collateral, or mentioned with a view to complete a train of facts, in which latter case you may generally recite it as concisely as possible.

When a deed is formally recited, the clause begins thus, if it be an *indenture*, "Whereas by indenture, bearing date on the — day of —, and made between &c." If it be a *deed-poll*, "Whereas by deed-poll, under the hand and seal of A. B., bearing date the &c." If it be an *agreement*, "Whereas by an agreement in writing, indented, bearing date &c., and made between &c." If it be a *will*, "Whereas A. B., late of &c., deceased, by his last will and testament in writing, duly executed and attested for the devise of real estates, and bearing date &c." And in the last case it is usual to introduce the recital by an averment of seisin in the testator thus,— "Whereas A. B., late of &c., being seized to him and his heirs in fee-simple of the messuages &c., hereinafter released &c., by his last will &c." If the matter in question is personality only, the statement of the mode of execution is of course omitted. Some persons invariably insert the words "on or about" before the statement of the day of the date of an instrument, to guard against the liability to a clerical mistake of the day.

his is material, however, only in a few cases, namely, where the operative part of the conveyance is made to depend on the recital. If, for instance, a lease bearing date the first of March, is recited as bearing date the second of March, and then there is an assignment of all the lands which were devised by the hereinbefore in part recited indenture of lease, as there is not any such indenture of lease, there would in strictness be no valid assignment.

The words "on or about" are therefore used, that the date recited may not be conclusive, and to give room for a court or jury to consider that the lease of the first of March is the lease assigned.

In the great majority of instances, however, recitals are only used for purposes of information; and unless you can rely upon yourself to use the words "on or about" when they are material, unless you have the habit of so doing generally, I do not see why they should be used in ninety-nine cases where they are, unless because they may be useful in the hundredth.

Cautious practitioners also introduce the statement of the parties to the recited indenture by the words "made or expressed to be made," because all the parties may not have executed; but an indenture expressed to be made between such and such parties, and executed by the material ones, would be considered as sufficiently answering the description of an indenture made between such parties; at all events these words can only be material in the same cases in which the words "on or about" are, namely, when the operative part of the instrument is made dependent upon the recitals.

The length at which instruments are to be recited must be governed entirely by the circumstances of the case. When the result is a familiar one, and little dependent on the language of the instrument, they can scarcely be recited too concisely. But when the instrument is unusual in its character, it should be recited more fully, sufficiently so to enable a lawyer reading the draft to embrace the exact object and operation of the instrument; and when a special clause or proviso is to be acted upon, or resorted to, it should be recited almost verbatim, merely turning present and first-future tenures into past and second-future tenures, and the words "here," "now," and "these presents," into "there," "these," and "the now reciting indenture."

There are cases, however, in which even this should be

omitted, and in which the instrument should be copied in *longa serba*. This happens when a will, or a devise in a will, is expressed with such ambiguity, and the construction of it is so difficult, that it is not safe to read it in any but its own identical words. In that case, you recite that the testator made his will in the words or to the effect following, (that is to say,) &c., or that he made his will &c., in which is a devise in the words or to the effect following &c.

There is another mode of recital which requires extreme accuracy and clearness of head to perform successfully. It is that which condenses, into a mixed statement, the results both of written instruments and intermediate facts. Thus we sometimes see the results of deeds brought unto one or two condensed recitals, such as the following:—" And whereas under or by virtue of certain indentures of &c., bearing date &c., the indenture of release being made &c., being a settlement &c., and under and by virtue of a deed-poll or instrument in writing of appointment, under the hands and seals of the said H. and M. his wife, and executed by them in the presence of two credible witnesses, and attested by the same witnesses, being an appointment made by the said H. and M. his wife, to the use of P. C. their eldest son, his heirs, and assigns for ever, in pursuance of a power contained in the said indenture of release, the said H. was, at the date of the indenture next hereinafter recited, tenant for his life of the messuages, lands, and hereditaments hereby released &c., with the appurtenances, with remainder in fee to the said P. C.; and under or by virtue or means of certain indentures &c., the indenture of release being of — parts, and made &c., being the settlement &c., the remainder in fee of the said P. C., of and in the messuages &c., was conveyed or otherwise assured to divers uses, to take effect from and after the solemnization of the then intended marriage of the said P. C. and S. B., and under those uses the said John Lord C., as the first son of the body of the said P. C., upon the body of the said J. B. begotten, became seised of the same messuages &c., for an estate in tail male in remainder; and the said J. C., the grandfather, departed this life on or about &c., and thereupon the said J. Lord C. became seised of the said messuages &c., hereby &c., for an estate in tail male in possession." (a)

(a) It will be obvious that this *accumulative* mode of reciting is apt to suspend the meaning so long, that, to comprehend the statement, the

It is not for every one perhaps to attempt such recitals as these. But, to a certain extent, this mode of recital may be adopted by all, where it is wished to avoid lengthy recitals of deeds, and you have but one or two instruments to state the results of.

And I would here remark, that when brevity is an object, you may often accomplish your purpose by an inverted order of recital.

In the cases I mentioned some time ago, for example, when speaking of the necessity of reciting some things for the sake of the abstract, as,

First, Where the property has been devised to one for life, remainder to another in fee, and the tenant for life is dead, instead of reciting the will, and the death of the tenant for life, you can recite that the vendor is seised in fee-simple in possession, under the will of A. B. : C. D., the devisee for life, having died on the — day of — &c.

In the second case, viz. where a descent had taken place, subsequent to the last conveyance or will, instead of reciting the conveyance or will and the descent, you can recite that "the vendor is seised in fee-simple, being the nephew and heir at law of A. B., who was the devisee in fee thereof, under the will of C. D., or who purchased the same from C. D."

In the third case, viz. where a late owner had made a will devising the estate to A. B. in fee, and the devise lapsed by the death of A. B. in his lifetime, instead of reciting all these facts, *sciriatim*, you can recite that the vendor is seised in fee-simple, being the cousin and heir at law of A. B., the late owner thereof, who died intestate as to the same, a devise in fee-simple thereof contained in his will having lapsed by the death of the devisee in his lifetime.

In all these cases you may thus give all the information that is absolutely necessary for preserving the continuity of title on the abstract.

It is a general principle in reciting not to state any thing that is self-evident, that is to say, not to state any result which is a direct and obvious consequence of the facts recited.

reader must begin again, which is a certain sign that it is deficient in the requisite perspicuity. It would conduce much to the clearness of the illustration given in the text if it were broken down into two or three recitals, and in fact, such is the case in Mr. Park's own MS. collection.

Some persons not attending to this principle, very unnecessarily recite that A. died, whereby his estate for life ceased, or that B. entered into an obligation for £100, whereby he became liable to pay it.

When, however, the result is not obvious, and the connecting facts, which form part of the induction, have been stated some time ago, it is often very proper, and a great assistance to the person reading the draft, to state that result, in order to keep up the chain of the transactions in the reader's mind. And in fact it may properly and usefully be done wherever the facts are complicated and difficult to collect the results from. It should, however, never be done argumentatively. You should no more have a speaking draft than a speaking affidavit.

It is of course an exception to this where you have occasion to state, for the purpose of explaining the draft, that it is contended by one of the parties that so and so is the case, inasmuch as, or by reason of, so and so,—it is then, not you the draftsman, who are speaking; you are merely rehearsing what is alleged by another as part of the *res gesta*.

It is frequently proper also to recite negative facts; negations which are necessary to the validity of the transaction, and of which the recital at a future period furnishes confidence to the mind in reference to the title. For instance, if there be a power to two jointly to appoint, and in default of such appointment a like power to the survivor, and the power is now to be exercised by that survivor, it is proper to recite that no appointment was made under the joint power.

Indeed in every case in which an inquiry would be likely to be made as to a fact hereafter, it is proper to state the fact, although it be a negative one; because at a future time that recital will have credit given to it, and set at rest the inquiry.

There are some recitals or statements which are almost always found in particular places, and which have been sometimes called *associated* recitals. For instance, when a will is recited, it is almost always followed with a statement that the testator is dead, and that the will was duly proved; and so whenever there exists any contingency or event on which the effect of the deed recited in any degree depends, a statement of the happening of such contingency or event must follow the recital of the deed.

All these cases, however, may be provided for, when brevity is an object, parenthetically: For instance, after stating the will, you can add "and which was duly proved in the — Court

of — on the — day of — ;" the fact of probate being itself a sufficient assertion of the testator's death, and frequently the recital of a will is introduced by stating that the said A. B. (the testator) departed this life on such a day, having first duly made and published his last will and testament, &c., and which was duly proved, &c.

And I would here remark, that where the deed you are preparing is one for the executors themselves; as, for instance, a release, it is very unnecessary to lengthen your draft by reciting the fact of probate, and the day of the testator's decease, information which is certainly not required by the persons who are not to have the benefit of the deed. And this is a fit opportunity for remarking that, in all cases, consideration should be had in reciting, of the purposes for which the deed is afterwards to answer; for if it is merely an isolated and transitory transaction, it is useless to recite many things, which it would be extremely proper to recite if it were to become one of the title deeds.

Regard also should be had to the hands through which the draft is to pass; for if there be many collateral parties, it is wise to recite enough to enable them all, or rather their professional advisers, to comprehend fully the circumstances and estimate the regularity of the previous stages, while if it be merely for parties who are already glutted with the facts, your recitals can scarcely be too concise; provided you show that they know what they are about, which is always prudent to establish; because if the transactions should afterwards be attacked in a court of equity, a good deal may turn upon the ambiguity or explicitness of the instrument; and that is another thing that you should keep in mind, generally, in reciting, and particularly in all deeds of arrangement or compromise; namely, to put forth the evidence both of intelligence and discretion on the face of the transaction itself, so that the parties may be led, by the very structure of the deed, to a just perception of what they are about, and that there may be no room to assert that they were led blindfold.

And this of itself is one of the reasons for the practice of reciting, which has sometimes been attacked by half-witted persons, as an invention of lawyers to increase their fees; for if there were no recitals in deeds, we should not only have to spell out their objects from the acts performed, and to read the former instruments, and to collect the preceding facts as we could, but we should be altogether without evidence of the

statements or representations under which the execution of such deeds was procured, and we never should know what amount of *suggestio falsi* or *suppressio veri* might not have been exercised.

It is sometimes difficult to determine the order in which deeds should be recited. Generally speaking, that which disposes them in order of date is the most advisable; but where there are distinct interests, and each is the subject of a separate class of deeds, then it is more advisable to recite the whole of one class, before another class is entered upon. And wherever an estate is purchased with trust monies, and to be conveyed to prescribed uses, it is proper to recite first the deeds relating to the title to the property, afterwards those showing how the trust monies became liable to be so appropriated, and what trusts they are subject to, without attending to the dates of the deeds as between these two classes.

In some cases, the arrangement of complicated deeds by way of recital is an office requiring the greatest address and ingenuity. The great point to accomplish is so to arrange them, that the intelligibleness of no recital shall be suspended till you come to a future recital, but that the mind may be gradually led on to a full development of the facts, and that without entangling yourself with other deeds which are not really material to the matter in hand, but into which you are only liable to be led by the gradual accumulating of concatenations.

One of the greatest of all difficulties on a complicated title is to know when to begin reciting; for you can sometimes find no resting place, or rather no starting point in the whole abstract, till you get to the first sheet; in other words, every deed is inextricably entangled with its predecessors, and you can no where find a clear seisin in fee. These cases can only be got over by a little *finesse*. You must find out some point in the title sufficiently far back to comprehend all the existing interests, in which by some partial or dexterous recital of an instrument, leaving out all the matter which would carry you back into the prior title, you can, as it were, *manufacture* a starting point, and from that point, select so much of the subsequent title, as will be necessary to bring all your parties forward. You may also frequently leave out (in reciting a string of title) mortgages which have been reconveyed and deeds which ultimately leave the matter in *statu quo*, because if you can in any way get the true existing result upon your draft, it is not very material by what steps you get it.

Note (B) p. 69.

OF PROVING WILLS, AND TAKING OUT ADMINISTRATIONS IN CASES OF TERMS OF YEARS.

[From the Second Rep. of the Real Prop. Com.]

A will must be proved, and letters of administration must be taken out in the court of the ordinary who has jurisdiction over the assets of the testator or intestate. If the trustee of a term die, leaving personal effects, all of which, including the land in the term, are within the jurisdiction of the same court, his will ought to be proved, or administration ought to be taken out in that court. If he die, leaving personal effects in one diocese or peculiar, the land in the term being in another diocese or peculiar within the same province, either Canterbury or York, his will ought to be proved, or the letters of administration ought to be taken out in the prerogative court of that province. If he die, leaving personal effects within one of the two provinces, and the land in the term be within the other province, for the purpose of administering his assets, exclusive of the term, the will must be proved, or the letters of administration must be taken out, either in the prerogative court of that province or in an inferior court, as circumstances may require; but, on account of the term, the will must also be proved or administration must also be taken out, either in the prerogative court of the other province, or, if he had no other assets within that province besides the term, in the inferior court of the ordinary having jurisdiction over the place where the land in the term is situated.

If the will of a deceased trustee of a term be proved in an inferior court, not having jurisdiction over the place where the land in the term is situated, or in an inferior court having such jurisdiction, when the testator left other assets out of that jurisdiction, but within the same province in which the land in the term lies, or in the prerogative court of one province, when the land in the term is within the other province, and the executor so proving should assign the term; yet although he could make the assignment, no use could be made of it, as the probate he had obtained would not, in proving the title to the term, be admitted as evidence to prove that he was the exe-

cutor. But the assignment, though made by an executor who, as to the term, has not proved the will in the proper court, will be rendered available if the will should, either in the lifetime of the executor, or after his decease, be proved in the court in which it ought to have been originally proved with reference to the term, as part of the assets of the testator, as such subsequent probate would, in proving the title to the term, be admitted as evidence to prove that the person who assigned it was the executor.

If administration to a deceased trustee of a term who died intestate be taken out in an inferior court, not having jurisdiction over the place where the land in the term is situated, or in an inferior court having such jurisdiction, when the intestate left other assets out of that jurisdiction, but within the same province in which the land in the term lies, or in the prerogative court of one province, when the land in the term is within the other province, an assignment of the term by the administrator would be absolutely void.

If all the assets of a deceased trustee of a term, including the term, be in the same province, and his will be proved in an inferior court not having jurisdiction over the place where the land in the term is situated, or in an inferior court whose jurisdiction embraces the land in the term, but does not extend to the other assets, according to a practice recently adopted, to avoid the transmission of the will from the inferior court to the prerogative, letters of administration limited to the effects of the deceased trustee, so far as regards the term, are granted by the prerogative court to some person for the purpose of assigning the term, and in that case the title to the term, even if it should have been previously assigned by the executor of the trustee, is traced from the trustee through the medium of the assignment from the limited administrator.

If a trustee of a term has died intestate, and it should at any time afterwards be requisite to have the term assigned, and at the time of requiring the assignment there should be no administrator of the deceased trustee, or, being such, he should have derived his qualification from a court whose jurisdiction does not embrace the land in the term, it is usual, in these cases, for the purpose of assigning the term, to obtain letters of administration limited to the effects of the trustee so far as regards the term.

If a trustee of a term has died intestate, and his assets, including the term, should, so far as they are known, be con-

fined to one inferior jurisdiction, or, exclusive of the term, **should**, so far as they are known, be confined to one province, **and** the land in the term should be within the other province, **and** it should be necessary to obtain limited letters of administration for the purpose of assigning the term, in either of these **cases**, notwithstanding a limited administration from the inferior court, whose jurisdiction embraces the land in the term, **might** be sufficient, yet in practice a grant from the prerogative court, although more expensive than a grant from the inferior court, is generally preferred. Because, an administration granted by a prerogative court, when it has no authority to do so, is good till repealed, and all the mesne acts of the administrator are valid; but an administration granted by an inferior court, when the same ought to have been granted by the prerogative court, is absolutely void, and all the mesne acts of the administrator are invalid; so that the assignment of the term by the limited administrator from the prerogative court would stand good, although that court, supposing the intestate not to have left assets, including the term, in more than one inferior jurisdiction, may have exceeded its authority in making the grant; on the other hand, the assignment of the term by the limited administrator from the inferior court would be absolutely void if it should afterwards be discovered that the intestate left assets in more than one inferior jurisdiction.

It hardly ever happens that the executor or administrator of a deceased testator or intestate knows that such testator or intestate was trustee of a term; consequently the will is proved or letters of administration are obtained in that court where the ordinary has jurisdiction over the assets with which the person proving or obtaining administration is acquainted.

Trustees of terms in estates of any magnitude are usually selected out of persons who leave assets sufficiently extensive to require a prerogative probate or administration. Consequently, an inadequate probate or administration, with reference to a term vested in a deceased trustee, is in these cases rare, except when the assets of the deceased trustee, exclusive of the term, are in one province, and the land in the term is in the other province.

Trustees of terms in small estates are generally persons whose assets, without taking the terms into account, do not require prerogative probates or administrations, and their wills are proved, or administrations to their effects are taken out, in the inferior courts in which their assets, without regard to the terms, happen to be, and very frequently the lands in the

terms are out of the jurisdictions of the courts where the probates or letters of administration were obtained.

The chances against a will being properly proved, or of letters of administration being properly taken out, with reference to a term, are greatly increased from the circumstance of there being so many courts in which wills are proved, and by which letters of administration are granted. It appears, from the parliamentary returns made in the year 1828, that, exclusive of the two prerogative courts of Canterbury and York, there are in those provinces inferior courts for proving wills, such as bishops, archdeacons, deans and chapters, prebendaries, lords of manors, and others, to the extent of about 370, and that the jurisdiction of many of these courts does not extend beyond a few parishes, and that the jurisdiction of some of them does not extend beyond one parish or manor.

Instances daily occur in which, with a view to enable parties to trace titles to terms assigned by executors who have not proved wills in proper courts, or with a view to make assignments of terms, or with a view to recover or defend the possession at law, it is necessary, from some or other of the causes above stated, either to prove the wills of deceased trustees of terms in other courts, or to take out administrations to their effects. The proving of a will or the taking out of administration occasions considerable delay in every transaction in which it is required, and the expense attending it is a serious tax on the landed proprietor; and it is obvious that the extent of the evil is in proportion to the number of wills or administrations to be proved or taken out.

Note (C) p. 92.

OF APPORTIONMENT OF RENT.

It has long been an acknowledged principle of law, that an entire contract cannot be apportioned. "In its familiar practical application," observes Mr. Swanston, (b) "the principle seems founded on reasoning of this nature: that the subject of

(b) 1 Swan. Rep. 338.

the contract being a complete event constituted by the performance of various acts, the imperfect completion of the event, by the performance of some only of those acts, (as service during a portion of the specified period, navigation to an extent less than the voyage undertaken,) cannot, by virtue of that contract of which it is not the subject, afford a title to the whole, or to any part of the stipulated benefit."

As a consequence of this principle, if a lease determined by the death of the lessor, before the appointed day for payment of the rent, no one could claim any rent for the fractional period: an integral part of the contract being—occupation of the land during the period for which rent was to be paid. To relieve the representatives of the lessor from the hardship of this rule, it was enacted, by the 11 Geo. II. c. 19, s. 15, (c) that where any tenant for life should happen to die before or on the day on which any rent was reserved or made payable upon any demise or lease of any lands, tenements, or hereditaments, which determined on the death of such tenant for life, the executors of such tenant for life might, in an action on the case, recover from the undertenant or undertenants of such lands, tenements, or hereditaments, if such tenant for life died on the day on which the same was made payable, the whole; or if before such day, then a proportion of such rent, according to the time such tenant for life lived, of the last year, or quarter of a year, or other time in which the said rent was growing due, making all just allowances.

It will be observed that the apportionment directed by the statute, is to be made only in the event of the demise determining by the death of the lessor being tenant for life. If the lessor have a power to lease, and he demises, but without observing the terms of the power, the demise, except under special circumstances, (d) will not be sustained in equity, so as to bind the remainder-man, as if it were a valid appointment:

(c) The preamble is in these words:—" And whereas where any lessor or landlord, having only an estate for life in the lands, tenements, or hereditaments demised, happens to die before or on the day on which any rent is reserved, or made payable, such rent, or any part thereof, is not, by law, recoverable by the executors or administrators of such lessor or landlord; nor in the person in reversion entitled thereto, any other than for the use and occupation of such lands, tenements, or hereditaments, from the death of the tenant for life, of which advantage hath been often taken by the undertenants, who thereby avoid paying any thing for the same."

(d) See 1 Swan. 357, n.

this, therefore, is a demise within the statute. (e) And the lease of a tenant in tail, not conformable to the enabling statute, 32 Hen. VIII. c. 28, is held to be a demise by a tenant for life within the meaning of the act. (f)

A question has been raised, whether a tenant *pur autre vie*, is a tenant for life within the meaning of the act: that he is within the mischief of the act is admitted; (g) and it has been contended, that he is within the act itself. (h) The words of the act, "upon any demise which determined on the death of such tenant for life, the executors, &c., of such tenant for life may, &c.," point only to a tenant for his own life; but the terms of the preamble are more general, though they can hardly be held to extend the enactment, so as to bring within it the case of a tenant *pur autre vie*. The inclination of the judges of the present day, is against giving effect to what is called the equity of a statute. (i)

It has also been questioned whether a *rector* is a tenant for life within the statute. In one case (k) Lord *Eldon* seems to have thought that he was not; but Sir Thomas *Plumer*, in commenting on that case, expressed a different opinion, intimating, that the demise of a *rector* may be fairly considered as within the act. (l) It would seem, though the point remains undecided, that a composition for tithes is not apportionable. (m)

It remains to be observed, that taxes and quit-rents are not made apportionable by the statute between the representatives of a tenant for life and the remainder-man. (n)

In considering several of the cases that will be met with in the books, it is necessary to bear in mind, that, in equity, it is a settled rule, that, if a party obtain money, which, in con-

(e) *Clarkson v. Lord Scarborough*, 1 Swan. 354, n; *Ex parte Smyth*, ib. 337, 366; *Symons v. Symons*, 6 Madd. 207.

(f) *Whifield v. Pindar*, 1781, cited 2 Bro. C. C. 662; 8 Ves. 311, *Page v. Gee*, Ambl. 198; 1 Swan. 341, n.

(g) *Wykham v. Wykham*, 3 Taunt. 316.

(h) Sir William *Evans*, however, has warmly urged, that the language of the statute does not admit of such an interpretation, and that "it would be much better, until there is another, to let the inconvenience remain as it is, than to allow the assumption of that judicial legislation, of which it is more easy to check the beginning than to calculate the end."—*Evans's Collect. of Stat.* vol. 4, p. 178.

(i) 6 B. & C. 475; 4 M. & S. 118.

(k) *Hawkins v. Kelly*, 8 Ves. 310.

(l) 2 Ves. & Bea. 336.

(m) *Aynsley v. Wordsworth*, 2 Ves. & Bea. 331.

(n) *Sutton v. Chaplin*, 10 Ves. 67.

science, belongs to another, he is bound to pay it to him, although such person could not have recovered it from the individual by whom it was at first paid. It was upon this principle, that Lord *Hardwicke* decided the case of *Page v. Gee*, (o) which has been followed in other cases. (p)

The rule that an entire contract cannot be apportioned, admits of several exceptions, besides those introduced by the statute. In this place, however, it will be necessary to notice only that class of cases which has reference to rent; and this may be distributed under two heads. 1, *Apportionment by act of the parties*; and, 2, *Apportionment by act of God or of the law*.

1. If a man who has a rent-service, purchase part of the land out of which it issues, (q) or if part of the reversion be granted to a stranger, the rent-service will be apportioned according to the value of the land. (r) And it is held, that the assignee of the reversion of part of the demised premises may sue the lessee upon such covenants as run with the land; (s) but he cannot take advantage of a condition, for, by the severance of any part of the reversion, the whole condition is destroyed. (t) If, however, the grantee of a *rent-charge*, purchase part of the land out of which it issues, there will be no apportionment, for the whole rent is extinguished; (u) but he may release part of the rent to the tenant of the land, or grant part of it to a stranger, without extinguishing the entirety. (v) So, if the lessee surrender part of the land to the lessor, the rent-service will be apportioned. (w)

2. If part of the land be so surrounded or covered with the sea that it cannot be enjoyed, the lessee will be bound to pay only a proportionable part of the rent; unless, indeed, he has covenanted to pay at all events. (x)

So if a man lease land of which he is seised in fee, and other land of which he is tenant for life, with a power of leasing at an entire rent, and the lease as to the lands comprised in the

(o) *Ambl.* 196.

(p) *Hawkins v. Kelly*, 8 Ves. 303: *Aynsley v. Wordsworth*, 2 Ves. & Bea. 331.

(q) *Litt.* s. 222; 8 Rep. 105; *Bac. Abr.* tit. "Rents." (M.)

(r) *Co. Litt.* 148 s; 2 Inst. 504; *Collins and Harding's case*, 13 Rep. 58.

(s) *Twynam v. Pickard*, 2 B. & A. 106; 32 Hen. VIII. c. 34, s. 1.

(t) *Knight's case*, 4 Rep. 56; and see *Twynam v. Pickard*, 2 B. & A. 112.

(u) *See ante*, p. 365, note.

(v) *Co. Litt.* 148.

(w) *Co. Litt.* 148.

(x) *Bac. Abr.* tit. "Rents," (M) 2.

power is void, the terms of the power not having been observed, yet the rent will be apportioned, the demise of the lands held in fee being good. (y)

And if a lessee be evicted from part of the lands, by a title paramount to that of the lessor, he is bound to pay only an apportioned rent for the residue. (z)

Several other cases, under both these general heads, will be found collected in Bacon's Abr. tit. "Rents," (M.)

It should be borne in mind, that no apportionment will be binding on the lessee, unless he consent to the amount, or it be fixed by the verdict of a jury. (a)

For a more elaborate discussion of the subject adverted to in this note, see the Dissertation by Sir W. D. Evans appended to his translation of Pothier, and to his remarks on the stat. 11 Geo. II. c. 19, s. xv., in his Collection of Statutes, vol. 4, p. 176; Mr. Swanston's note to *Ex parte Smyth*, 1 Swan. 337—350; and Mr. Jarman's Prec. vol. 4, p. 351—357.

Note (D.) p. 209.

OF PROVING PEDIGREES.

The rule of law which requires that to establish a title by descent, the inheritance must be traced from the person who last died seised, is briefly expressed in the maxim, *seisina facit stipitem*. In practice, this rule has proved a fruitful source of inconvenience and expense. To establish the "*actual seisin*" of the ancestor, it must be shown that he was in possession of the property in question by himself, or a tenant for years, (b) or, in the case of a freehold lease, that he had received rent, or exercised some other act of ownership. (c)

The most obvious sources of evidence of actual *seisin* are leases and rent-rolls; and from the necessity of the case the

(y) *Doe d. Vaughan v. Meyler*, 2 Mau. & Selw. 276; and see *Sugd. Pow.* 630.

(z) *Co. Litt. 148 b; Stevenson v. Lombard*, 2 East, 575.

(a) *Bliss v. Collins*, 4 Madd. 229; S. C. 1 Jac. & W. 426; S. C. 5 B. & A. 876; S. C. 1 Dow & Ry. 291; Bac. Abr. tit. "Rents," (M) 3.

(b) *Co. Litt. 15 a, 248 a; 3 Crui. 389. Jayne v. Price*, 5 Taunt. 326.

(c) *First Rep. of Real Prop. Com.* 15.

Court has even admitted the declarations of a deceased occupier that he held the property in question under the ancestor as sufficient proof of seisin. (d) Assessments to the land tax and poor rate are likewise had recourse to for the same purpose; and in a recent case (e) it was held, that an entry in the collector's book, showing that a house was rated in the name of a particular person, is good proof of occupation at that time.

The necessity of proving an actual seisin is, as respects any descent taking place on the death of any one dying after the first day of January 1834, wholly removed by the 3 & 4 W. IV. c. 106, s. 2, which enacts, that in every case descent shall be traced from the purchaser, *i. e.* the person who last acquired the land otherwise than by descent, or an escheat, partition, or inclosure; and to the intent that the pedigree may never be carried further back than the circumstance of the case and the nature of the title shall require, it is provided that the person last *entitled* to the land, *i. e.* the last person who had a right thereto, whether he did or did not obtain the possession or the receipt of the rents and profits thereof, shall, for the purposes of this act, be considered to have been the purchaser thereof, unless it shall be proved that he inherited the same, in which case the person from whom he inherited the same shall be considered to have been the purchaser, unless it shall be proved that he inherited the same; and in like manner the last person from whom the land shall be proved to have been inherited, shall, in every case, be considered to have been the purchaser, unless it shall be proved that he inherited the same.

Having (when necessary) established the actual seisin of the ancestor, the next step is to prove that he died "*intestate*" as to the estate in question. If the ancestor died without having made any will, the grant of letters of administration to his personal representatives will raise the presumption of his intestacy; (f) if he left a will, then the absence of any specific or residuary devise of the property will have the like effect.

According to the "practice of conveyancers," (g) the pro-

(d) *Peaseable d. Uncle v. Watson*, 4 Taunt. 16; *Davies v. Pierce*, 2 T. R. 53.

(e) *Doe d. Smith v. Cartwright*, 1 Ry. & Moo. 62; S. C. 1 Car. & P. 218.

(f) If the alleged intestate died abroad, and the descent is recent, additional evidence should be called for. See *Colvin v. Fraser*, 1 Hagg. Eccl. Rep. 107.

(g) See *Barnard. Ch. Rep.* 63; 2 *Eden*, 64; 3 *Bligh*, 290.

bate or grant of letters of administration is sufficient evidence of the "*death*" of the testator or intestate; and in peerage cases, where better evidence could not be adduced, the grant of letters of administration has been received for that purpose. (h) The courts of law and equity generally require more direct evidence of death, (i) unless from the circumstances of the case better proof cannot be given. (j) The register of burial affords the best proof that the party is dead.

Having proved the *seisin*, *intestacy*, and *death* of the ancestor, the next step is to establish the "*heirship*." If, for example, the person alleged to be heir claims as the "*eldest son*," his "*seniority*" may be proved by an affidavit of some member of the family; and to establish his "*legitimacy*," it must be shown that he was born in wedlock; for this purpose the conveyancer is generally satisfied with the evidence afforded by the register of the marriage of the parents, and of the baptism of the son. The fact, however, that an individual is born in lawful wedlock is not conclusive evidence of his legitimacy; it is presumption only. "The fact," says Lord *Redesdale*, "that any child is the child of any man, is not capable of direct proof, and can only be the result of presumption; understanding by presumption, a probable consequence drawn from facts, (either certain or proved by credible testimony,) by which may be determined the truth of a fact alleged, but of which there is no direct proof." (k) This presumption may be rebutted by circumstantial evidence, *i. e.* by evidence of those circumstances which usually accompany facts; from the proved existence of which circumstances both law and reason infer the existence of the facts themselves. (l) This subject is very luminously discussed by Lords *Eldon* and *Redesdale* in their opinions in the *Banbury Peerage Case*, to which the student is referred.

In substantiating a pedigree, it is important to bear in mind that parish registers prove only the time and place of baptism, the time and place of marriage, and the time and place of burial. If, therefore, the time or place of *birth* is recorded,

(h) Minutes of Evidence in the *Banbury Peerage Case*, p. 120, and in the *Kilmorey Case*, p. 10.

(i) *Thompson v. Donaldson*, 8 Esp. 63; *Clayton v. Gresham*, 10 Ves. 288.

(j) *French v. French*, 1 Dick. 268.

(k) *Banbury Peerage Case*, Le Marchant, p. 437.

(l) *Banbury Peerage Case*, Le Marchant, p. 400.

this is not legal evidence of that fact, because to register it is not the duty of the minister. (m) Parish registers are considered by the Courts in the light of records, and a verified copy is admissible in evidence. (n) But in questions of peerage, the original register, or, if that cannot be produced, the transcript deposited with the bishop of the diocese, is generally required. (o) In the *Gardner Peerage Case*, however, this rule was not adhered to. To prove the marriage of Lord Gardner at Madras, a book brought from the secretary's office, in the East India House, and containing a list of marriages and burials at Madras authenticated by the signatures of the officiating clergymen, was produced. It appeared in evidence that this book consisted of separate sheets, copied from the original register in India, and transmitted from time to time to the East India House. Upon its being shown that the list containing the entry of Lord Gardner's marriage was in fact transmitted from India, (and this was principally proved by the accompanying dispatch of the secretary to the government,) and that the clergyman whose name was affixed thereto did at the time when the alleged marriage was solemnized, officiate at Madras, the marriage was considered as proved. (p)

There are various other sorts of registers recording births, marriages, or deaths; but not being considered as public documents coming from official custody, they are of no greater authority in matters of evidence than mere private memoranda. Of this class are Fleet books, (q) Guernsey registers, (r) registers in an ambassador's chapel, (s) dissenters' registers at Dr.

(m) *Wihen v. Law*, 3 Stark. N. P. C. 63; *Rex v. Clapham*, 4 C. & P. 29; *Rex v. North Petherton*, 5 B. & C. 508.

(n) *Birt v. Barlow*, Dougl. 174.

(o) Minutes of Evidence in the *Marchmont Peerage Case*, p. 5, and in the *Killmorey Case*, p. 10.

(p) Minutes of Evidence in the *Gardner Peerage Case*, p. 15. It is stated that the lists of marriages and births in the book above mentioned extend as far back as 1709, p. 99. Mr. Le Marchant's Rep. p. 6, is not sufficiently explicit on the subject adverted to in the text, and this led Mr. Amos, in one of his admirable lectures on proving pedigrees (inserted in Leg. Ex. vol. ii., pp. 258—298) to observe that it does not appear clearly whether it was the original register. On examining, however, the Minutes of Evidence taken before the Committee of Privileges, I find it expressly stated that the document produced was a copy only of the register in India.

(q) *Read v. Passer*, 1 Esp. 218; 16 Ves. 59.

(r) *Huet v. Le Maurier*, 1 Cox, 275.

(s) *Leader v. Barry*, 1 Esp. 358.

Williams's library in Red Cross Street, and Quakers' registers at Devonshire House. (s) Even as mere private memoranda, the Fleet books especially ought to be received with caution. They were kept at the alehouses and brandy shops in the neighbourhood of the Fleet Prison by clergymen who either were obliged to reside within the rules, or who lived in the houses of "brandy-men" and "victuallers," their partners in the profit of "divinity-jobs." A curious contemporary account of these famous marriage-mongers is inserted in the note below. (t) Most of the Fleet books were purchased by the government in 1821, and deposited in the Consistory Court of London. They contain original entries of marriages, solemnized in the Fleet Prison and rules thereof, from 1686 to 1754.

Besides producing the register, it is necessary to "identify" it, that is to say, we must show that the person whose baptism, marriage, or burial is alleged to have been registered, is the same person whose name appears in the register. Identity of name is not sufficient; identity of person must be proved. (u) To establish this identity is frequently a task of great difficulty,

(s) *Ex parte Taylor*, 1 Jac. & W. 483; *Newham v. Raithby*, 1 Phill. 315; *Whittuck v. Waters*, 4 C. & P. 375.

(t) "From an inspection into the several registers for marriages kept at the several alehouses, brandy shops, &c., within the rules of the Fleet Prison, we find no less than thirty-two couple joined together from Monday to Thursday last without licences, contrary to an express act of Parliament against clandestine marriages, that lays a severe fine of £200 on the minister so offending, and £100 each on the persons so married in contradiction to the said statute. Several of the above-mentioned brandy-men and victuallers keep clergymen in their houses at 20s. per week each, hit or miss; but it's reported that one there will not stoop to no such low conditions, but makes at least £500 per annum of divinity-jobs after that manner. 'Tis pleasant to see certain fellows plying by Fleet Bridge to take poor sailors, &c., into the noose of matrimony, every day throughout the week, and their clocks at their offices for that purpose still standing at the canonical hour, though perhaps the time of day be six or seven in the afternoon." *Weekly Journal*, 1723, June 29th, quoted in *Burn's Fleet Reg.* p. 12. Lord Hardwicke's Act (26 Geo. II. c.33,) put an end to the solemnization of marriages at the Fleet, May Fair, and other places of the same kind, by enacting that any person solemnizing matrimony in any other place than a church or chapel, without banns or licence, should, on conviction, be adjudged guilty of felony, and be transported for fourteen years. A gossiping account of the introduction of this act is given in Horace Walpole's Letters, edited by the late Lord Dover, and in his memoirs of the last ten years of the reign of Geo. II. A mode of evading the act was soon suggested; for it is stated, in the Gentleman's Mag. for 1760, p. 30, that, at Southampton, vessels were always ready to carry on the trade of smuggling weddings by transporting the couple to Guernsey, there to be married. The price of such a marriage was five guineas. *Burn's Fleet Reg.* 19.

(u) *Birt v. Barlow*, Dougl. 162; *Draycott v. Draycott*, 12 Vin. Abr. 89, pl. 11.

lling for much assiduity and skill. If the person whose register is to be identified lived in the same parish in which the grister is found, this, if consistent with other circumstances, ises a strong presumption in favour of identity; and if belies the identity of name, the description of paternity corresponds, and still more, if to this be added the name of his trade occupation, as is frequently the case in ancient registers, the entity will be sufficiently proved. Mr. Amos, in one of his asterly lectures before referred to, mentions an interesting circumstance connected with the present subject, which will e best told in his own words.

“ I have,” he observes, “ been collecting some memorials f the celebrated Selden, which have never been communicated o the public; and this led me to search the parish register of he parish in which I knew he was born, and where the house n which he was born is now to be seen, with an inscription over the door, carved by himself when a boy. I find in the parish register of Salvington, near Worthing, ‘ John, the son of John Selden, *the minstrel*. ’ The identity of parish and christian name, and the circumstance that the date must be somewhere near the time of Selden’s birth, were almost enough to satisfy me that I had hit the right entry; but when I found ‘ son of John Selden, *the minstrel*, ’ I immediately recognized my hero, for I recollect that when this illustrious character, to whom the constitution of this country is so deeply indebted, and whose learning was the admiration of Europe, was yet a young Oxonian, and was honoured by dining at Sir Robert Alford’s table, some person asked the knight who was that remarkably acute lad at the bottom of the table? To which Sir Robert replied, ‘ he is the son of the *minstrel*, whose fiddle you hear in the hall.’ ”

If Registers do not contain the necessary proof, recourse may be had to secondary evidence; such as engravings on rings worn by members of the family, inscriptions on tombstones or coffin-plates, and entries by one of the family in bibles, missals, prayer-books, almanacks, (x) or indeed in any

(x) *Vowles v. Young*, 13 Ves. 144; *Whitlocke v. Baker*, ib. 514; 2 Str. 1151; *Herbert v. Tuckal*, T. Raym. 84; *Goodright v. Moss*, Cowp. 591; *Berkeley Peerage Case*, 4 Campb. 401; Minutes of Evidence in the *De L’ Isle Peerage Case*, pp. 121, 122, 135. *Ryder v. Malbone*, cited in 2 Russ. and M. 160. *Kidney v. Cockburn*, ib. 167.

other book; for the competency of such evidence does not depend on the kind of book in which the entries are made, though the credit to which it is entitled may be much affected by that circumstance. Old pedigrees hung up in the family mansion, (y) or found in the family archives, (z) recitals in family deeds and wills have frequently been received; (a) but an abstract of title has been rejected. (b)

The principal means of proving ancient pedigrees is by old records, and inquisitions *post mortem*. "Perhaps," said Lord *Eldon*, (c) "while the feudal tenures prevailed, with the ancient inquisitions, as inquisitions *post mortem*, opportunities of establishing pedigrees were afforded, much superior even to the modern means by the register of baptisms. The heads of families upon those occasions made solemn declarations, which were matter of record; and threw a great light upon questions of inheritance." It must not, however, be inferred from these remarks that inquisitions are decisive evidence. In the claim of the Earl *Powis*, two inquisitions were produced expressly contradicting each other. (d)

In some cases old *parish books* may afford evidence on questions of pedigree. Thus the date of Caxton's burial was fixed by a charge of twenty pence for two torches and four tapers, used at his funeral, entered in one of the parish books of St. Margaret's, Westminster. (e)

Other sources of evidence are the ancient *books of the H-*

(y) *Goodright v. Moss*, Cowp. 591.

(z) Minutes of Evidence in the *De L'Isle Peerage Case*, p. 155 *Monkton v. Attorney-General*, 2 Russ. & M. 147.

(a) *Doe d. Johnson v. Lord Pembroke*, 11 East, 505. 13 Ves. 514; Minutes of Evidence in the *De L'Isle Peerage Case*, pp. 116, 127; Minutes of Evidence in the *Banbury Peerage Case*, pp. 6, 117.

(b) Minutes of Evidence in the *Banbury Peerage Case*, p. 142.

(c) 18 Ves. 148.

(d) Minutes of Evidence in the *De L'Isle Peerage Case*, p. 128.

(e) To the local historian, and even to the Political Economist, old Parish Books may not be without value. They frequently contain very curious entries. In one which I have lately examined, I find it stated, under the date of 1639, that the Churchwardens attended the Quarter Sessions, and treated the Justices with a quart of wine and sugar, which cost twelve pence; and in another place, that they bestowed upon the vicar and his wife a quart of wine and sugar, which cost ten pence. Under the date of 1646, there is an entry to the effect that a meeting was held by the thirty men of the parish, and it was ordered that no churchwardens should thereafter expend upon the minister, who should preach on exercise days, and themselves, more than three shillings and four pence. The price of articles of husbandry is also frequently stated with great particularity.

wards' Office and their *Visitation-books of counties*. (a) In the *De Lisle Peerage case*, a book called "the Earl Marshal's book" was offered in evidence, but the counsel were informed, that the house had made this distinction in receiving as evidence, books from the Heralds' College;—that when those books contained the substance of the information obtained, in consequence of inquiries which were made under judicial authority, when the heralds were in the habit of travelling round the country, and examining the witnesses, they are admissible in evidence, and had been produced in Committees of Privilege; but that when this practice ceased, and the books were mere entries of that which parties had chosen to have registered, without any due authority being shown for the entry, they are inadmissible. (b)

It remains to be observed that, contrary to the usual policy of the law, "hearsay" evidence is admissible in cases of pedigree. "It is admitted," to use the language of Mr. Burke, "from necessity, to accommodate human affairs, and to prevent that, which courts are by every possible means instituted to prevent, a failure of justice." (c)

(a) See Sir W. D. Evans's *Pothier*, vol. 2, p. 163, and Phillips on *Ev.* vol. 1, p. 421. The first commission for visitation was issued in the twenty-first year of Hen. VIII. and the last in the second of James II.

(b) Minutes of Evidence in the *De L'Isle Peerage Case*, (13 April, 1826), p. 12.

(c) Burke's *Works*, vol. 14, p. 380. "In ancient times," he observes, "it has happened to the law of England (as in pleading, so in matter of evidence,) that a rigid strictness in the application of technical rules, has been more observed than at present it is. In the more early ages, as the minds of the judges were in general less conversant in the affairs of the world, as the sphere of their jurisdiction was less extensive, and as the matters which came before them were of less variety and complexity, the rule being in general right, not so much inconvenience on the whole was found from a literal adherence to it, as might have arisen from an endeavour towards a liberal and equitable departure, for which further experience, and a more continued cultivation of equity as a science, had not then so fully prepared them. In those times, that judicial policy was not to be condemned. We find too, that probably from the same cause, most of their doctrine leaned towards the restriction; and the old lawyers being bred, according to the then philosophy of the schools, in habits of great subtlety and refinement of distinction, and having once taken that bent, very great acuteness of mind was displayed in maintaining every rule, every maxim, every presumption of law creation, and every fiction of law, with a punctilious exactness; and this seems to have been the course which laws have taken in every nation. It was probably from this rigour, and from a sense of its pressure, that, at an early period of our law, far more causes of criminal jurisdiction were carried into the House of Lords, and the Council Board, where laymen were judges, than can or ought to be at present.

"As the business of courts of equity became more enlarged, and more

In admitting such evidence, however, the courts have laid down certain subsidiary rules in order to guard against the danger of fabrication and falsehood, and which must be strictly adhered to. In an elaborate judgment recently delivered by Lord Brougham, this subject is very fully discussed. "To admit hearsay evidence in pedigree," observes his Lordship, (d) "you must, by evidence *dehors* the declarations, connect the person making them with the family. But I cannot go the length of holding, that you must prove him to be connected with both the branches of the family, touching which his declaration is tendered. That he is connected with the family is sufficient: and that connection once proved, his declarations are then let in upon questions touching that family; not declarations of details which would not be evidence, (*King v. Erith*, 8 East, 539), but declarations of the nature of pedigree, that is to say, of who was related to whom, by what links the relationship was made out, whether it was a relationship of consanguinity or of affinity only, when the parties died, (*Kidney v. Cockburn*, 2 Russ. & M. 167.), or whether they are actually dead;—every thing, in short, which is, strictly speaking, matter of pedigree, may be proved as matter relating to the condition of the family, by the declarations of deceased persons who, by evidence *dehors* those declarations, have been previously connected with the family respecting which their declarations are tendered." "But is there no further restriction touching the subject matter, and touching the manner in which the declaration is made? Clearly there is, and nothing can be more satisfactory, or more consistent with good sense, or with legal principle and decided cases, than the summary of the doctrine given by Lord Eldon, in *Whitlocke v. Baker*, (13 Ves. 511.) His Lordship there observes, that the admissibility of such evidence is founded upon the presumption that the words given in evidence are the natural effusion of the party, upon

methodical; as magistrates, for a long series of years, presided in the Court of Chancery, who were not bred to the common law; as commerce, with its advantages and its necessities, opened a communication more largely with other countries; as the law of nature and nations (always a part of the law of England) came to be cultivated; as an increasing empire; as new views and new combinations of things were opened, this antique rigour and over-done severity, gave way to the accommodation of human concerns, for which rules were made, and not human concerns made to bend to them."—*Report from the Committee appointed to inspect the Lords' Journals*, Burke's Works, vol. 14, pp 374—376
 (d) *Monkton v. Attorney-General*. 2 Russ. & M. 156.

an occasion when his mind stands even, without bias, to exceed the truth or to fall short of it. I entirely agree that the words must be the natural effusion of the party, and that, generally speaking, he must have no bias upon his mind. But even here there must be a limit. It will be no valid objection to such evidence that the party may have stood, or thought he stood (for that would equally bias,) *in pari casu* with the party tendering the declaration, and relying upon it for the purpose of his own contention; for it has been decided, that although the party deceased, whose declaration you are giving in evidence, was *in pari casu*, and, if he had been living, might have stood in the shoes of the party who tenders his declaration in evidence, that is not sufficient to exclude it."

"With the exception of what is said in *Drummond's* case, (1 Leach's Cr. Ca. 378,) where the evidence was clearly inadmissible upon other grounds, I can find no warrant for asserting that if you tender the evidence of a man by way of hearsay in a case of pedigree, (and of such cases only I am now speaking,) that evidence is inadmissible when it comes from a person who stood *in pari casu* with the party tendering it. Lord *Tenterden* in *Doe v. Turner*, (1 Ry. & Mo. 142,) states the law to be directly the other way, and he refers to a peerage case in the House of Lords, where the declarations of a deceased husband were given in evidence on the part of his son, although the husband was so far *in pari casu* with the claimant, that if the son was entitled to the peerage then, the husband ought to have been a peer likewise. A stronger instance of similarity of situation than this can hardly be conceived, and the case certainly seems to go a great way. But without pronouncing an opinion upon that decision, it is perfectly settled, both upon reason and authority, that the rule cannot be so far restricted as to exclude evidence, on account of the bias supposed to operate on the person making the declaration, in consequence of his being in the same situation, touching the matter in contest, with the party relying upon that declaration."

"One restriction, however, clearly must be imposed: the declarations must be *ante litem motam*. If there be *lis mota*, or any thing which has precisely the same effect upon a person's mind with *litis contestatio*, (e) that person's declaration ceases

(e) "Not merely after the commencement of the suit, but after the dispute has arisen, that is the primary meaning of the word *lis*."—*Per Lawrence J.*, 4 Campb. 411.

to be admissible in evidence. It is no longer what Lord *Eldon* calls a natural effusion of the mind."

In conclusion we may add, that the admissibility of hearsay evidence, does not depend on its being of the first degree. The declarations tendered in evidence may either refer to what the party knew of his own knowledge, or, as is much more frequently the case, to what he had heard from others to whom he gave credit. (f)

Note (E.) p. 363.

OF TENANT-RIGHT OF RENEWAL.

It having been usual for the crown, the church, and other corporations to favour their old tenants by granting them a renewal of their leases in preference to strangers, this preference, almost invariably recurring, originated the idea of something like property, which is called a *tenant-right of renewal*. In Scotland, a similar right obtains under the name of "*kindlie*;" and it is stated, by Dr. *Jamieson*, that sixty or seventy years ago, if one took a farm over the head of another who had a kindlie to it, this was reckoned as unjust as if he had been the real proprietor. Mr. *Ross*, an able writer on conveyancing and legal diligence, conceives that, but for the Reformation, the kindlie-tenants or rentallers of Scotland would have ultimately acquired all the rights of the English copyholder. The churchmen, foreseeing the storm that was gathering, "feued, sold, and disposed upon" as much of their land as they conveniently could. So soon as the church lands fell into the hands of the ministers of reform, the old rentallers were threatened with removal. To irritate, however, so large a body of the people, by at once expelling them from their farms, was too hazardous a step. But that which could not with safety be accomplished at once by some general measure, was effected by slow de-

(f) *Monkton v. Attorney-General*, 2 Russ. & M. 165; *Athol v. Ashburnham*, Bull. N. P. 295; *Doe d. Futter v. Randall*, 2 Mo. & P. 20. The *dictum* in *Johnson v. Lawson*, 2 Bing. 88, that the Court will reject hearsay upon hearsay, or, as the learned Judge expressed it, "hearsay two deep" is clearly not supported by authority.

grees; and the rentallers were at last obliged either to leave their farms, or turn their rentals into feus, rendering double their accustomed services. (g)

In France, before the revolution, a similar tenant-right or kindlie existed; and no churchman could grant a lease to any one but the old tenant, unless he had refused to accept a renewal.

By the law of England, however, the right of renewal, (as it is called,) is merely nominal on the part of the lord; though, from the usage before alluded to, the *tenant* is considered as having an ulterior interest beyond his subsisting term. Precarious as such interest is, for it amounts to a mere *chance*, yet it has become a fund for settlements of every kind, for mortgages and other securities; and is subjected to the same limitations, and applied to the same provisions as the most permanent interests. (h)

This right of renewal has been so far recognized in equity, that if any person holding a *fiduciary character*: *e. g.* executor, (i) trustee, (k) guardian, (l) or the like, avail himself of his position, and obtain a renewal, the court will consider it as a graft upon the old lease, for the benefit of all persons beneficially interested therein.

The same principle is equally applicable, where the renewal is obtained by one having only a *partial interest* in the old lease, *e. g.* tenant for life, (m) mortgagee, (n) joint-tenant, (o) copartner, (p) or the like. And the rule is not relaxed where the renewed lease comprehends other property, in addition to the premises previously demised: all persons interested in the

(g) See Ross's *Lectures on the Law of Scotland*, vol. 2, p. 479.

(k) 4 Bac. Abr. 890, 891, tit. *Leases*, (U.) and see Mr. Hargrave's argument for the appellant, in *Lee v. Vernon*, 5 Bro. P. C. 10; and Co. Litt. 290 b. n. 249, s. ix. by Mr. Butler.

(i) *Luckin v. Rushworth*, 2 Ch. Rep. 113, S. C. Finch's Rep. 392; *Anon.* 2 Ch. Ca. 207.

(k) *Reech v. Sandford*, (commonly called the *Rumford Market Case*,) Selw. Ca. Ch. 61; *Griffin v. Griffin*, 1 Sch. & Lef. 852; *Mulvany v. Dillon* 1 Ball & B. 409.

(l) 4 Bac. Abr. 891.

(m) *Bowles v. Stewart*, 1 Sch. & Lef. 209; *Randall v. Russell*, 3 Meriv. 195, 196; *Hardman v. Johnson*, ib. 347; *Taster v. Marriott*, Am. 668; *Raw v. Chichester*, ib. 715; S. C. 1 Bro. C. C. 198 n; *Pickering v. b'Fowles*, ib. 197; *Owen v. Williams*. Amb. 734; S. C. 1 Bro. C. C. 199 n.

(n) *Fitzgerald v. Rainford*, 1 Ball & B. 37, 46; 4 Bac. Abr. 891.

(o) *Ex parte Grace*, 1 Bos. & Pull. 376; *Killick v. Flesney*, 4 Bro. C. C. 161; *Palmer v. Young*, 1 Vern. 276.

(p) *Featherstonhaugh v. Fenwick*, 17 Ves. 298.

old lease will be entitled to the benefit of the renewal, so far as it relates to the property originally demised. (q) Nor will an under-lessee for life, purchasing the interest of an immediate lessor, and obtaining from the superior lessor a renewal of the lease so purchased, be exempted from the application of this rule. (r) The same doctrine has been applied even to a stranger, who, to the prejudice of the old tenant, has, by undue means, obtained a renewal. (s) It will not be irrelevant to add, that the principle is the same where the lease expires, and the tenant becomes only tenant from year to year. (t.)

Attempts have frequently been made to bring a purchaser of the reversion in fee, when he is made a trustee of the lease, or has a partial interest in it, within the rule; but the Court has rightly considered, that the cases are not analogous, and that there is no ground whatever for declaring such a purchase to be in trust for those who had nothing at all to do with the reversion. (u)

In settlements and mortgages, it is usual to provide for the payment of the costs of renewal; but where this is not done, the question of *contribution* may arise.

With reference to persons having particular estates: as tenant for life, reversioner, remainder-man, or the like, the rule now is, that such persons shall contribute to the payment of the expenses of renewal, in proportion to the benefit which each derives from such renewal. (v) There is, however, one exception to this rule, viz. where the tenant for life is the person, or one of the persons, for whose life or lives the lease is held. Under such circumstances, as he can derive no benefit from a renewal, it seems, that he cannot be called upon to contribute any share of the expenses. (w)

If a mortgagee renews, (which he may if the mortgagor neg-

(q) *Giddings v. Giddings*, 3 Russ. 241, 257.

(r) *Giddings v. Giddings*, *ut sup.*

(s) *Parker v. Brooke*, 9 Ves. 583; 4 Bac. Abr. 891.

(t) *James v. Dean*, 11 Ves. 383; 15 Ves. 236; *Randall v. Russell*, 3 Meriv. 190, 196. That the interest of a tenant from year to year is transmissible to representatives, see *Doe d. Shore v. Porter*, 8 T. R. 18; 11 Ves. 393; 15 Ves. 241; 6 T. R. 293.

(u) *Norris v. Le Neve*, 3 Atk. 88; *Randall v. Russell*, 3 Meriv. 190, 197; *Hardman, v. Johnson*, *ib.* 347, 352.

(v) *White v. White*, 9 Ves. 554; *Allan v. Backhouse*, 2 Ves. & B. 79; *Montfort v. Cadogan*, 2 Meriv. 8; 17 Ves. 495; 19 Ves. 635, 639.

(w) *Verney v. Verney*, *Ambl.* 88; *Adderley v. Clatering*, 2 Bro. C. C. 659; *S. C.* 2 Cox, 192.

lects to do so,) the costs of renewal may be added to the principal of the mortgage with interest. (x)

If a fund be provided for the payment of the expenses of renewal, the rules above stated do not, of course, apply. (y).

And we may add that, if the estate be charged with an annuity, the annuitant is not bound to contribute towards the expenses of a renewal, not even where the original term has, at the time of obtaining a renewal, wholly expired. (z)

Note (F.) p. 448.

OF THE ADMISSIBILITY OF PAPERS TO PROBATE.

According to circumstances a paper may be complete or incomplete;—*complete*, when it is apparent on the face of the paper that the testator did not mean to do any further act to give it validity;—*incomplete*, when it is not reduced to that form in which the deceased purposed to leave it as an operative testamentary paper. (a)

Whatever may be the *form* of the instrument propounded, yet, if it has the character of a testamentary paper, to be consummated by death, it will be admitted to probate. (b)

In *Greene v. Proud*, (c) a deed indented, made between father and son, by which the father agreed to give the son so much, and the son agreed to pay certain debts and sums of money, and containing expressions of a testamentary nature, it was held that such an instrument was entitled to probate.

In *Shergold v. Shergold*, (d) a deed of gift from A. to B., in consideration of sixpence, to take effect after the death of A., was held to be a will, and administration was granted with the deed annexed.

(x) *Lacon v. Mertins*, 3 Atk. 4; S. C. 1 Wils. 8; S. C. 1 Ves. 312; *Manlove v. Ball*, 2 Vern. 84.

(y) *Milles v. Miles*, 6 Ves. 761; *Stone v. Theed*, 2 Bro. C. C. 248.

(z) *Maxwell v. Ashe*, 1 Bro. C. C. 444 n.; *Moody v. Matthews*, 7 Ves. 174; but see 2 Ball & B. 195.

(a) 1 Hagg. 86; Eccl. Rep. 30.

(b) See 1 Phil. 9, 10, 218; 2 Hagg. 247; 3 Hagg. 218, and the cases above cited.

(c) 1 Mod. 117.

(d) Prerog. 1714, cited by Sir John Nicholl in *Thorold v. Thorold*, 1 Phil. 10.

In *Markwick v. Taylor* (e) a deed of gift from one of all his estates, to take effect after death, was held to be testamentary, and administration with the deed annexed was decreed.

In *Corp v. Corp*, (f) a paper, styled a deed of gift, and containing testamentary expressions, was held to operate as a will.

In *Thorold v. Thorold*, (g) a paper, called a deed of gift, not bearing a stamp, and to operate after death, was held to be testamentary.

In *Rigden v. Vallier*, (h) a deed by which property was granted among children, to take effect after payment of funeral expenses, was held to be entitled to probate.

In *Hickson v. Witham and others*, (i) a writing, purporting to be an indenture, but declared by the party to be his last will and testament, and by which he gave several legacies, and made two executors, was decreed to be a good will.

So it has been held, that the assignment of a bond by indorsement, (k) receipts for stock, and bills indorsed, "for Mrs. Sabine;" (l) letters, (m) marriage articles, (n) promissory notes, and notes payable to executors to evade legacy duty; (o) Scotch settlements in the form of a contract, to take place on the death of one of the contracting parties, (p) unexecuted bonds, (q) paper reciting and confirming marriage articles, (r) a "memorandum," (s) deed poll, (t) and checks on bankers, (u) are admissible to probate.

(e) Prerog. 1722, cited by Sir John Nicholl in *Thorold v. Thorold*, ut sup.

(f) Prerog. 1798, cited by Sir John Nicholl, in *Thorold v. Thorold*, ut sup.

(g) 1 Phil. 1.

(h) 2 Ves. Sen. 252; S. C. 3 Atk. 731.

(i) Fin. Rep. 195. S. C. 1 Ch. Cas. 248; Vln. Abr. tit. "Devise," (A. 2.) pl. 5.

(k) *Musgrare v. Down*, cited by Sir John Nicholl, in *Masterman v. Maberley*, 2 Hagg. 247.

(l) *Sabine v. Goate*, ib.

(m) *Drybutter v. Hodges*, ib.; *Manly v. Lakin*, 1 Hagg. 180; *In the goods of Dunn*, ib. 488; *Denny v. Bartum*, 2. Phil. 575; *Haberfield v. Browning*, cited in *Matthews v. Warner*, 4 Ves. Jun. 200; *Cobbold v. Baas*, ib.

(n) *Marnell v. Walton*, cited by Sir John Nicholl, in *Masterman v. Maberley*, 2 Hagg. 247.

(o) *Maree v. Shute*, ib.

(p) *Hog v. Lashley*, cited by Sir John Nicholl, in *Thorold v. Thorold*, 1 Phil. 11; S. C. 3 Hagg. 415, n.

(q) *Masterman v. Maberley*, 2 Hagg. 235.

(r) *Walton v. Walton*, 14 Ves. 318.

(s) *Dime v. Munday*, 1 Sid. 862.

(t) *Habergham v. Vincent*, 2 Ves. Jun. 204, 231; *Rigden v. Vallier*, 2 Ves. Sen. 255, 258.

(u) *Bartholomew v. Henley*, 3 Phil. 317.

If a will refers expressly to another instrument already written, and there is no doubt of the identity, such instrument, when necessary, will be considered as part of the will, and be construed as if incorporated in it. (v) And here we may remark, that cases have occurred where a clause, introduced by fraud, has been expunged; where omitted by error, supplied. But in all cases of this kind, two circumstances must occur: 1, an ambiguity on the face of the executed instrument itself; and 2, the means of obtaining clear and indisputable proof, that the insertion or omission of the clause was contrary to the intention of the testator. (x)

Whenever a paper is manifestly imperfect and unfinished, the legal presumption is, that the deceased had not finally made up his mind then to dispose of his property, and consequently such a paper is not entitled to probate. (y) This presumption, however, may be rebutted by extrinsic evidence, accounting for its state, by showing either that the deceased was prevented from completing, or that he had abandoned the intention of finishing it, meaning, that it should operate in that very form, without any further act. (z)

Accordingly, it is held, that if the paper propounded is unfinished, yet if it can be proved that it contains the final (a) intentions of the deceased, and that the finishing was prevented by inevitable necessity, or the act of God, it will be admitted to probate. (b)

(v) *Metham v. Duke of Devonshire*, 1 P. Wms. 529; 2 Ves. Jun. 228; *Molineux v. Molineux*, Cro. Jac. 145; Vln. Abr. tit. "Devises," (A. 3.) *Lord Lansdown's Case*, 10 Mod. 99.

(x) *Travers and Edgell v. Miller*, 3 Add. 226; *Bayldon v. Bayldon*, ib. 252; *Fawcett v. Jones*, 3 Phil. 484; *Draper v. Hitch*, 1 Hagg. 674, 677; *Harrison v. Stone*, 2 Hagg. 537, 550; *Shadbolt v. Waugh and others*, 3 Hagg. 570; *Blackwood v. Damer*, cited in 3 Phil. 458; S. C. 3 Add. 289.

(y) *Satterthwaite v. Satterthwaite*, 3 Phil. 1, Ib. 628, 409; *Cundy v. Medley*, 1 Hagg. 140; *Jameson v. Cooke*, ib. 82; ib. 258.

(z) *Per Sir John Nicholl, in Wood v. Medley*, 1 Hagg. 670; *Firncase v. Gayfrere*, 3 Phil. 409; *Forbes v. Gordon*, ib. 628.

(a) "At one period, before the law and its principles were correctly settled, an unfinished paper, coupled with sudden death, would have been established, even though a considerable interval had elapsed between the writing of the paper and the death of the testator; but it is now clearly settled, that in respect to an unfinished paper, though followed by sudden death, the interval must be accounted for; and it must be shown that the testator adhered to the intention, but was prevented from finishing it." *Per Sir John Nicholl, in Johnson v. Johnson*, 1 Phil. 494, 496.

(b) *Forbes v. Gordon*, 3 Phil. 614; *Musto v. Sutcliffe*, ib. 105; *Lewis v. Lewis*, ib. 109; *Thomas v. Wall and others*, ib. 23; *Scott v. Rhodes*, 1 Phil. 12; *Huntington v. Huntington*, 2 Phil. 218; *Jameson v. Cooke*, 1 Hagg. 82;

Again: If the paper propounded is unfinished, yet, if it can be proved that it contains the final intentions of the deceased, and that he had abandoned the intention of finishing it, meaning that it should operate in its existing state, it will be admitted to probate. (c)

Acting on the same principles, the Court has held that, in order to obtain probate in common form, of an *unfinished* paper, there must be, first, affidavits stating such a case as, if proved by depositions, would establish the paper; and, secondly, consent, implied or express, from all parties interested. (d)

Where there is a regular will, and another paper begun, as a new will, which the testator has been prevented, by the act of God, from completing, the two papers may be taken together as the will of the deceased, and operation, *pro tanto*, be given to the latter paper, (e) provided the proof of final intention is clear. (f)

In *Goldwyn and Aspenwall v. Coppell*, (g) there was a will regularly executed in Jamaica. The deceased gave instructions for an entire new will; before he had disposed of the residue he became incapable:—the Court pronounced for the two papers, as containing together the will.

In *Harley v. Bagshaw*, (h) three papers falling under the

Worlich v. Pollett, cited in Com. Rep. 452; *Smith v. Ashton*, Vin. Abr. tit. "Devise." (A. 2.) pl. 4; S. C. Chan. Cases, 266; Fin. Rep. 273.

(c) *Friswell v. Moore*, 3 Phil. 135, 3 Phil. 5; *Bone and Newsam v. Spear*, 1 Phil. 845; *Billinghurst v. Vickers*, 1 Phil. 187; *Harris v. Bedford*, 2 Phil. 177; *Dickenson v. Dickenson*, 2 Phil. 173; *Read v. Phillips*, 2 Phil. 123; *Buckle v. Buckle*, 3 Phil. 323; *Habberfield v. Browning*, cited in *Matthews v. Warner*, 4 Ves. Jun. 200; *Cobbold v. Baas*, ib.

(d) *In the goods of Herne*, 1 Hagg. 225,—of *Hurrlill*, ib. 253,—of *Taylor*, ib. 641,—of *Robinson*, ib. 643,—of *Thomas*, ib. 695,—of *Edmonds*, ib. 698,—of *Wenlock*, ib. 555; *In the goods of Tolcher*, 3 Add. 16; *In the goods of Adams*, 8 Hagg. 258.

(e) "If this principle," observes Sir John Nicholl, "was rightly understood in other courts, there would seldom be much question about cumulative legacies; for, where a paper is codicillary, and two legacies are given to the same person, they are cumulative. Where instructions are pronounced for, *as containing together* a will, that is, where there is a complete will, and an instrument, intended as the inception of a new will, but not completed, the latter legacy supersedes and revokes the former, and is substituted in the place of it." 2 Phil. 312.

(f) *Per Sir John Nicholl*, 2 Phil. 35; *Harley v. Bagshaw*, 2 Phil. 48; *Goldwyn and Aspenwall v. Coppell*, cited by Sir John Nicholl, in *Harley v. Bagshaw*, 2 Phil. 51; *Ingram v. Strong*, and *Roberts v. Lawrence*, 2 Phil. 294, 312.

(g) *Ut sup.*

(h) 2 Phil. 48.

same principle were pronounced for as containing, together, the will of the deceased.

What are the circumstances which will raise a legal presumption that the paper is deliberative only? and what sufficient to rebut such a presumption when raised, and to establish a final and absolute intention?—are questions that frequently occasion much embarrassment.

In *Ravenscroft v. Hunter and others*, (i) there were alterations in ink, in the margin and body of the will, made with care, and conformable to long-entertained and lately-expressed intentions, and the Court held, that the will so altered, contained the testator's final intentions, and was entitled to probate. In this case, observed Sir John Nicholl, “the alterations might be in some measure deliberative, as to *form*; for the testator might intend to effect his purpose more regularly by a codicil, and through an attorney, but not as to the disposition, since upon that he had made up his mind, and considered, meant, and thought, the paper would operate as now altered.”

If alterations are made in pencil only, the general presumption is, that they are deliberative; but when in ink, they are considered final and absolute: and when they are of both sorts, the presumption as to each is stronger. (k) Presumptions of this kind, like all other presumptions, may be strengthened by circumstances. Thus, if the interlineations and obliterations have rendered the sense incomplete, and the paper unintelligible, the natural and legal inference is, that they were not intended to be final; and this inference is still more forcible, if the alterations were made by one distinguished for habits of accuracy. (l)

Again: In *Reay v. Cowcher*, (m) it was held, that when a codicil, disposing of realty as well as personality, is signed only by initials, and unattested, and with many interlineations, the presumption is that it is deliberative.

Many other cases might be adduced in illustration. (n) “The

(i) 2 Hagg. 68.

(k) *Hawkes v. Hawkes*, 1 Hagg. 322.

(l) *Edwards v. Astley and others*, 1 Hagg. 490.

(m) 2 Hagg. 249.

(n) See *Satterthwaite v. Satterthwaite*, 3 Phil. 1; *Forbes v. Gordon* 8 Phil. 614; *Buckle v. Buckle*, 8 Phil. 828; *Parkin v. Bainbridge*, 8 Phil. 321; *Thomas v. Wall*, 3 Phil. 23; *Harris v. Bedford*, 2 Phil. 177; *Dick-*

legal principles as to imperfect testamentary papers of every description vary much," observes Sir John *Nicholl*, (o) "according to the stage of maturity at which those papers have arrived. The presumption of law, indeed, is against every testamentary paper not actually *executed* by the testator; and *so executed*, as it is to be inferred, on the face of the paper, that the testator *meant* to execute. But if the paper be complete in all *other* respects, that presumption is slight and feeble, and one comparatively easily repelled. For *intentions*, *sub modo* at least, need not be *proved* in the case; that is, the Court will *presume* the testator's intentions to *be* as expressed in *such* a paper, on its being satisfactorily shown that its not being *executed* may be justly ascribed to some *other* cause, and not to any *abandonment* of those intentions, so expressed, on his, the testator's part. But, when a paper is *unfinished*, as well as *unexecuted*, (especially when it is just begun, and containing a few clauses or bequests,) not only must its being *unfinished* and *unexecuted* be accounted for, as above, but it must also be *proved*, (for the Court will not *presume* it,) to express the testator's intention, in order to repel the legal presumption against its validity. It must be *clearly made to appear*, upon a just view of *all* the facts and circumstances of the case, that the deceased had come to a *final* resolution in respect to it, *as far as it goes*; so that, by establishing it, even in such its imperfect state, the Court will give effect to, and not thwart or defeat the testator's real wishes and intentions, in respect to the property which it purports to bequeath, in order to entitle *such* a paper to probate, in any case, in my judgment."(p)

It is a well established principle, that a paper, not written in the presence of, nor read over to, or by the testator, may yet be established upon clear proof that it was written in his lifetime, (q) and was drawn up conformably to his instructions,

enson v. *Dickenson*, 2 Phil. 173; *Read v. Phillips*, 2 Phil. 122; *Paske v. Ollat*, 2 Phil. 823.

(o) *Montefiore v. Montefiore*, 2 Add. 357, 358.

(p) *Per Sir John Nicholl*, in 2 Add. 357, 358.

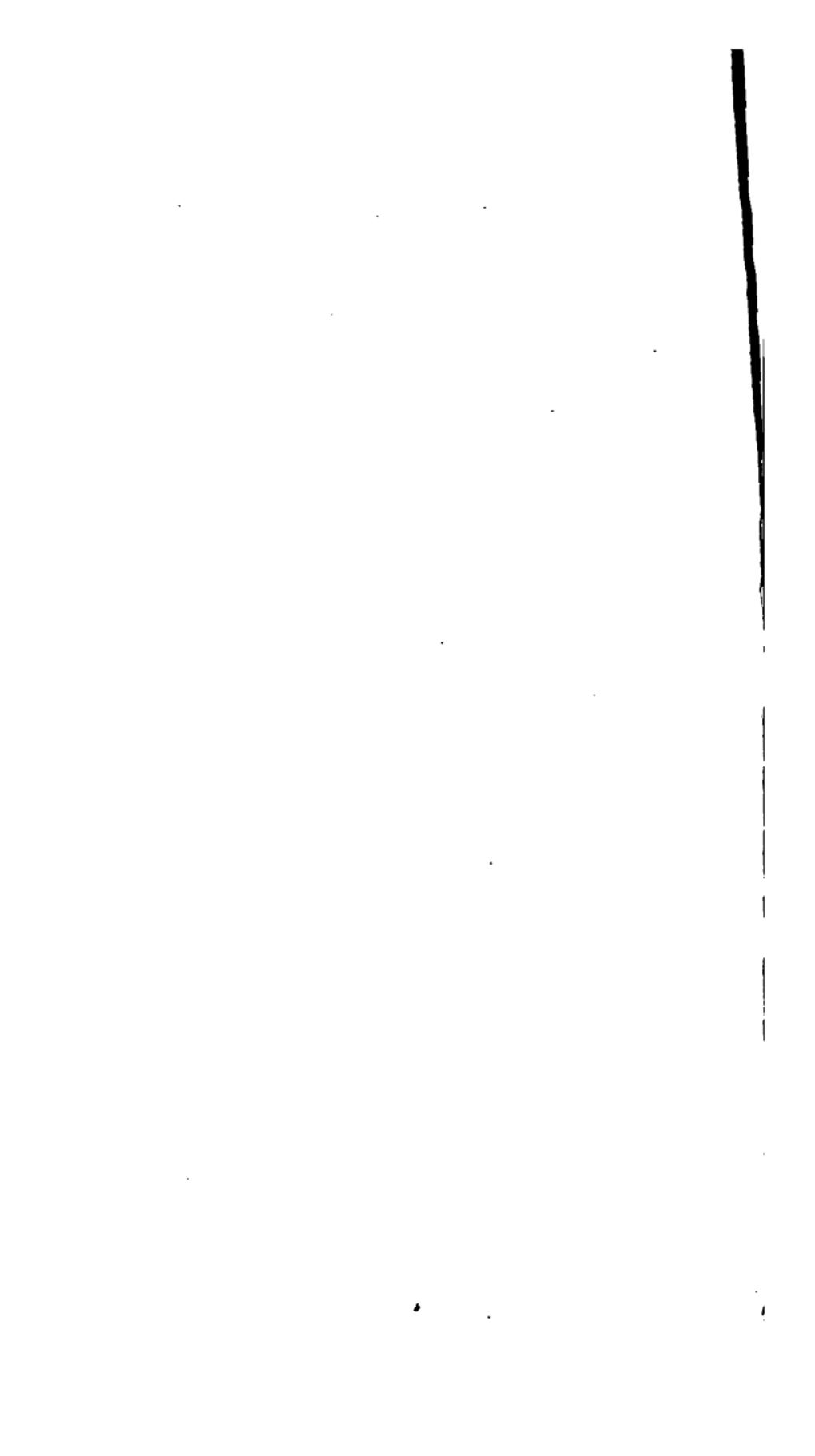
(q) "There is no case that I am aware of, in which a bequest has been established, that has not been reduced into writing in the lifetime of the testator. The Court has gone the greatest possible length, when it has pronounced for instructions which have been reduced into writing during the lifetime of the deceased, but which have not been read over to him; and I cannot agree in the construction attempted to be put on the Statute of Frauds, that this would be a will by word of mouth."—Sir John *Nicholl*, in *Rockell v. Youde*, 3 Phil. 145.

the further completion being prevented by the intervention of incapacity; (r) and the principle still holds, even if the instructions pass through the medium of a third person. This was decided in *Lewis v. Lewis*; (s)—instructions were given by the deceased, which were reduced into writing, during his lifetime, by one who was to transmit them to a solicitor: sudden death intervened before the will could be duly executed, and it was held, that such instructions were entitled to probate.

From this review of the cases, it follows, that *all that is absolutely necessary to entitle a paper to probate is, that proof should be given that the paper was written in the lifetime of the deceased, and contains his final wishes as to the disposition of his personal estate after his death.*

(r) *Gardner v. Smith*, in 1727, cited by Sir John Nicholl in *Sikes v. Snaith*, 2 Phil. 356; *Bury v. Bury*, 1791, 1b. 355; *Box v. Wetherby*, 1804, 1b. 355; *Wood v. Wood*, 1 Phil. 357; *Sikes v. Snaith*, 2 Phil. 351.

(s) 3 Phil. 109.



INDEX.

A.

ABATEMENT,
of suit, 385.

ABDUCTION,

and marriage at Gretna Green, 53.
conviction of abductor, 54.

Note: On the law of Abduction, 53 (a).

ACCEPTANCE,

of testamentary provision in lieu of annuity, 55.
agreement to accept annuity in lieu of dower, 56.
of bill of exchange, 138.

ACCOUNT,

intention to open banking account, and agreement to convey estate as a security for money overdrawn, 126.
repayment of advances to be secured by bond, 127.
agreement to allow banking account to be overdrawn, on being indemnified, 129.
to secure money overdrawn by bond of principal and a surety, *ib.*
that bankers have allowed account to be overdrawn, debtor agreeing to assign policy as a security, 130.
adjustment and settlement of, 56.
and agreement to execute mutual releases, *ib.*
made up between copartners before death of one of them, 57.
between mortgagor and mortgagee, *ib.*
stated between mortgagor and executor of mortgagee, *ib.*
with mortgagee in possession, on releasing equity of redemption, 58.
allowance by creditors of stated account, 59.
administrator's accounts set forth in schedule, 60.
rendered and examined, *ib.*
that trustees have made out account of their receipts and payments, *ib.*
presentment of accounts and vouchers, 61.
inspection and approval of, *ib.*

ACT OF PARLIAMENT, 61.

- conveyance in pursuance of, *ib.*
- fulfilment of requisitions of, 62.
- expediency of applying for act to exonerate accountant's estates from claims of crown, *ib.*
- of repealing provisions of recited act, and of granting others, 63.
- that purposes cannot be effected without the aid of, *ib.*

ACTION. *See Judgment.*

- on bills of exchange, 64.
- in ejectment, *ib.*
 - judgment and execution, 65.
- that action was commenced against tenant in possession to recover premises, 64.
- that tenant entered into consent rule, and pleaded, 65.
- and pleadings, *ib.*
- before Court of Session in Scotland, 66.
- agreement by obligees to enforce securities against obligor, as the means of relieving sureties from their liabilities, 68.

ADMINISTRATION,

- intestacy and letters of, 68.
- limited letters of, 69.
- de bonis non, ib.*
- grant of, to committee, 279.

Note. On taking out Administrations in cases of terms of years, 467.

ADMITTANCE,

- to copyholds as tenant in fee, 70.
- as tenant in tail under will, *ib.*
- of trustee to copyholds, *ib.*

Note. On the effect of Admitting a tenant under a non-render upon trusts, 71 (d).

- bill to enforce admittance to copyholds, *ib.*

Note. On the jurisdiction of Courts of Equity to enforce admittance, ib. (e)

ADVOWSON,

- title to, 72.
- grant of, 73.
- contract for sale of, *ib.*

E

- attainment of, 74.
- by surviving children, *ib.*
 - tenant for life, *ib.*
 - deceased children, 75.
 - certain persons, others being infants, *ib.*

AGENT,

- that purchaser acted as agent only, 75.
- agreement to employ, 76.
 - to act as, *ib.*
 - on decease of present agent, 77.
 - desire to employ insurance broker, 76.
- intention to leave the united kingdom, and consent of one to act as agent during the absence of principal, *ib.*

AGREEMENT. *See Contract for Purchase.*

- articles of, 77.
- by copartners to convey their property to trustees for creditors, 155.
- heir at law to join in conveyance, 172.
- persons interested in purchase-money to join in conveyance, *ib.*
- husband and wife for separation, 372.
- for application of purchase-money where there are several interested in mortgage-money, 99.
 - persons having conflicting interests, 101.
- apprenticeship, *ib.*
 - apprentice binding himself, 102.
 - to a surgeon, *ib.*
 - to an attorney, *ib.*
- conveyance in consideration of indenture already prepared, 176.
- exchange, 198.
- gradual liquidation of debts, 156.
- marriage, 282.
- mutual conveyance, 174.
 - release, 200, 320.
- partition, 308, 311.
- perpetual renewal, 362.
- on marriage to settle estates, and pay off mortgage, 172.
- separation to allow wife an annuity, 373.
 - to assign wife's paraphernalia to her trustees, 374.
- sale of estate to give bond of indemnity, 145.

AGREEMENT—(*continued.*)

- to accept annuity in lieu of dower, 90.
 - composition for debt, 154.
- act as agent, 77.
 - on decease of present agent, *ib.*
- advance loan, 250, 254.
 - portion, 334.
- allow compensation for difference in value between estates of different tenures, 153.
- apply a certain sum in reduction of mortgage, and to exonerate the purchased estates from the residue, 98.
 - part of purchase-money in part discharge of mortgage, *ib.*
- appoint new trustees, 426.
 - receiver, 359, 360.
- assign bond, 149.
 - dower, 191.
 - judgment, 230.
 - leaseholds, 81.
 - money to trustees, 82.
 - mortgage-money, 84.
 - ship, 83.
- become surety, 388.
- confirm will, 446.
- convert interest into principal, 256.
- convey and assign freeholds and leaseholds, 81.
- covenant for production of title deeds, 185.
 - for payment of interest, 329.
- defend suit at joint expense, 384.
- dissolve copartnership, 320.
- discharge mortgage, 80, 251, 300.
- edit work, 83.
- employ agent, 76.
- enforce securities against principal in order to relieve sureties, 217.
- enter into association for the prosecution of felons, 353.
 - bond, 143.
 - covenant as surety, 388.
 - partnership, 317, 248.
- effect an assurance on life, 331.
- execute conveyance to put an end to doubts as to the validity of former deed, 362.
- mutual releases, 320.

AGREEMENT—(*continued.*)

to execute release of all claims, 155.
of warranty, 200.

release in equity of lands from rent-charge, 365.
exonerate lands from dower, 191.

indemnify purchaser against defects of title, 217.

dower, 191.

loss of deeds, 216.

rent and covenants, 218.

rent-charge, *ib.*

join in assignment for the purpose of assenting to legacy, 119.

bond as a surety, 144.

conveyance without prejudice to interests in money, 173.

to remove doubts, 174.

to supply evidence, *ib.*

let ship to freight, 206.

license assignment of lease, 235.

make new conveyance, 171.

merge term, 286, 342.

pay expenses of preparing securities, 86.

premium, 333.

sum of money for owelty, 199, 311.

to trustees, 328, 430.

put an end to doubts as to effect of devises, 448.

reconvey freeholds to be held as part of partnership stock, in the nature of personalty, 173.

retain value of stock in payment of loan, 327.

satisfy judgment, 230.

secure payment of part of purchase-money by mortgage, 80.

by bond, *ib.*

performance of contract by bond, 144.

stand possessed of term upon trust, 83.

surrender term, 393.

that paper shall be considered as testamentary, 448.

ALLOTMENT,

under inclosure act, 213.

ANNUITY,

contract for sale of, and payment of consideration, 84.

from a future day, 85.

and warrant of attorney to secure payment of, *ib.*

ANNUITY—(continued.)

agreement to pay expenses of preparing securities for annuity out, of the consideration, and payment accordingly, 86.
to accept annuity in lieu of dower, 90.
 allow wife, 373.
grant of, 86.
demise for securing, 87.
assignment of bond for securing, 88.
power to repurchase, 89.
contract for repurchase of, *ib.*
payment of arrears and agreement to accept a certain sum for repurchase of, *ib.*
that annuity became in arrear, whereupon estate charged therewith was sold, *ib.*
acceptance of testamentary provision in lieu of, 90.
bond, in contemplation of marriage to secure, 147.

APPLICATION,

for discharge under the insolvent debtors' act, 221.
of money in discharge of debts, 96.
 pursuant to act of parliament, 97.
agreement to apply a certain sum in reduction of mortgage-debt, and to exonerate purchased estates from residue, 98.
to apply part of purchase-money in part discharge of mortgage, *ib.*
for application of part of purchase-money where there are several interested in mortgage-money, 99.
for application of purchase-money, persons entitled having conflicting interests, 101.
for loan, 343. *See Loan.*

APPOINTMENT. *See Power.*

under a power given by deed and recovery, 93.
anticipating pin-money, and surrender of term created to secure same, *ib.*
lease and release, fine and declaration of uses, and appointment, 95.
that no joint appointment was made, 96.
that no appointments have been made under any powers now affecting the hereditaments, *ib.*
title to money under, *ib.*
of guardian by infant, 207.
 order of court, 208.

APPOINTMENT—(continued.)

of guardian by will, *ib.*
power to appoint protector, 355.
desire to appoint protector, 356.
of protector, in lieu of protector under settlement, *ib.*
relinquishment of protectorship, and appointment of new
protector, *ib.*
power to appoint receiver, 358.
uses, 343.
agreement to appoint receiver, 359, 360.
power to appoint new trustees, 421.
new trustees, and to revoke old and limit new.
uses, 423.
umpire, 118.
agreement to appoint new trustees, 427.
desire to exercise power of appointing new trustees, *ib.*
of trustees, 428.
new trustee, 427.
umpire, 118.
portions, 340.
executors, 442.
death of old trustees, and appointment of new, 428.
revocation of appointment of executor, and nomination of
substitute, 443.

APPORTIONMENT,

of purchase-money for freeholds and copyholds, 91.
*Note. On Apportioning purchase-money with reference
to ad valorem duty, ib. (a).*

of purchase-money, where several trustees entered into
joint contract for different lands at an entire price, 92.
agreement to apportion rent, *ib.*

Note. On Apportionment of Rent, 470.

APPRENTICESHIP,

agreement for, 101.
for, apprentice binding himself of his own auth-
ority, 102.
for, to a surgeon, *ib.*
for, to an attorney, *ib.*
articles of, *ib.*
agreement to assign apprentice for residue of term, 103.
with executor of master to take apprentice for residue
of term, *ib.*

APPROVAL,

- of title by counsel, 104.
- conveyance by master, *ib.*
- copy of conveyance by master, 105.
- security by master, *ib.*
- lease by master, 261.

ARBITRATION,

- agreement between copartners to refer matters in dispute to, 105.
- to refer subject of suit to, 106.
- submit claims under will to, 107.
- refer matters in dispute occasioned by alleged breach of covenants to, *ib.*
- disputes touching titles submitted to, 110.
- submission by deed to, 112.
- by mutual bonds, 114.
 - order of Nisi Prius, 115.
 - of Nisi Prius in K. B. 116.
 - of K. B. 117.
 - at assizes, *ib.*
 - of Court of Chancery, 118.
- difference of opinion between arbitrators, *ib.*
- power for arbitrators to appoint an umpire, *ib.*
- appointment of umpire, 118.

Note. On Appointing Umpire, 106, (c).

ARMS. *See Surname.*

- direction in will to bear testator's, 388.
- assumption of, 390.
- letters patent enabling one to bear, 391.

ASSENT,

- agreement to join in assignment for the purpose of assenting to legacy, 119.
- of executors to bequest, 120.

Note. On Assenting to legacy, 119, (a).

ASSIGNEE,

- appointment of official assignee by commissioner, 131.
- of, by creditors, *ib.*
- petition to the court of review, praying to be discharged from office of assignee, and order accordingly, 133.
- bargain and sale from commissioners to, 134.

ASSIGNEE—(continued.)

refusal of, to accept lease, 135.
title as, *ib.*
conveyance by insolvent debtor to provisional, 222.
 by provisional assignee to permanent, 223.
assignment to and from provisional, 225.

ASSIGNMENT,

agreement to convey and assign freeholds and leaseholds, 81.
 to assign money to trustees, 82.
 paraphernalia to trustees, 374.
 mortgage-money to trustees, 84.
 judgment, 230.
 ship, 83.
 bond, 149.
of bond for securing annuity, 88.
 upon trust, 149.
desire that term should be assigned to attend, 399.
of term to attend, 400.
 to trustee for mortgagor, loan having been repaid, 401.
 and mortgage-money, 400.
 original lease not recited, 122.
letters patent, 248.
lease, 121.
 with licence of lessor, *ib.*
to and from provisional assignee, 225.
mesne and ultimate, 237.
licence to make, 235.
agreement to become party in order to license, *ib.*

ASSURANCE. *See Insurance.***ATTORNEY**,

letter of, to receive purchase-money, and execute conveyances, 246.
 to receive money assigned, and give effectual discharges, *ib.*
warrant of, to secure payment of annuity, 85.
 of loan, 440.

AUCTION,

sale by, 123.
before master, 264.

AUCTION—(continued.)

sale by, of one lot, 124.
that trust-property was put up to, but bought in, 125.

AWARD,

by deed-poll, 125.
rule of court enlarging time for making, 126.
indorsements on order enlarging time for making, *ib.*
under inclosure act, 213.
that award did not distinguish the titles and estates in respect of which allotments were made, and that it is expedient to supply such omission by act of parliament, 214.

B.**BANKERS.** *See Account.***BANKRUPTCY**,

flat of, 131.
appointment of official assignee by commissioner, *ib.*
of assignees by creditors, *ib.*
petition to the Court of Review, praying to be discharged from the office of assignee, and order accordingly, 133.
commission of, 134.
bargain and sale from commissioners to assignees, *ib.*
refusal of assignees to accept lease, 135.
title as assignees, *ib.*
proof of debt, *ib.*
receipt of dividend, *ib.*
that bankrupt has obtained his certificate, 136.

Note. On the Title of the Assignees to the bankrupt's estate, 132, (c).

BARGAIN AND SALE, 136.

as recited in release, 137.
from commissioners to assignees, 134.
Note. As to Bargain and Sale for a year in Ireland and the Colonies, 137, (g).

BILL IN EQUITY, 383.

to enforce admission to copyholds, 384.
and decree of foreclosure, *ib.*
of revivor and supplement, 385.
agreement to dismiss, 386.

BILL OF EXCHANGE,

and acceptance, 138.

that indorsee having lost bill within time of payment, applied to drawer to give him another, which he agreed to upon being indemnified, *ib.*

agreement by acceptor to pay lost bill on being indemnified, 139.

action on, 64.

BILL OF LADING, 207.**BILL OF SALE,**

of ship, 141.

shares of ship, *ib.*

Notes. *On the Registry Act, 142, (K.), (L.)*

indorsement of, on certificate of registry, 143.

by sheriff, 140.

Note. *As to reciting Writ in Assignment by Sheriff, 141, (i).*

BOND,

agreement to secure payment of part of purchase-money by bond, and execution of bond accordingly, 80.

to enter into, 143.

join in bond as a surety, 144.

on sale of estate to enter into bond of indemnity, 145.

to secure performance of contract by joint bond of principal and sureties, 144.

assign, 149.

that principal agreed to give surety a counter-bond, 144.

for payment of money, 145.

quiet enjoyment of purchased property, *ib.*

as a further security for repayment of loan, 147.

in contemplation of marriage, to secure annuity to wife, 147.

recorded at Edinburgh as a probative writ, 149.

with recitals, *ib.*

assignment of *ib.*

cancellation of, 150.

judgment in action on, 229.

BOOK,

agreement to edit, 83.

BOUNDARIES,

confusion of, 305.

BROKER,
desire to employ, 76.

BUILDINGS,
erection of, since conveyance, 307.

C.

CERTIFICATE,
that bankrupt has obtained, 136.

allowance of, *ib.*

of registry of ship, 142.

his Majesty's commissioners, 150.

commissioners under inclosure act, 215.

under commission of partition, 314.

order confirming, 316.

CESSER,
of term, 402.

CHARTER-PARTY, 207,

CLERKSHIP. *See Apprenticeship.*
articles of, 103.

CODICIL,
death, and probate of, 443.
will and several codicils, one of which contained a devise
of realty, *ib.*
that codicil amounted to a republication of will, 444.
not affecting will of realty, *ib.*
without revoking will in certain respects and bequeathing
legacy, *ib.*

COGNOVIT, 152.
judgment entered up on, 153.

COMMISSION,
of bankruptcy, 134.
partition, 313.

COMMITTEE. *See Lunacy.*
reference to master as to appointment of, 258.
report certifying fit persons to be, *ib.*
order confirming report, and appointment of, *ib.*

COMPENSATION,
agreement to allow, on account of difference in value be-
tween estates of different tenures, 153.
amount of, 154.

COMPOSITION,

- agreement to accept, for debts, 154.
- by copartners to convey their property to trustees for creditors, 155.
- for gradual liquidation of debts, 156.
- payment of, and agreement to execute release, 155.

CONSENT. *See Assent.***CONSENT RULE,**

- that tenant entered into, 65.

CONSIDERATION,

- apportionment of, 91.
- payment of, 321.

CONTRACT FOR PURCHASE,

- of fee and right of way, 157.
- fee in consideration of rent-charge, 158.
- share of lands and allotment, in consideration of a sum of money and an annuity, 159.
- freeholds and copyholds, and of timber at a valuation, *ib.*
- fee and arrears of rent by tenant, 160.
- reversion in fee, *ib.*
- equity of redemption, 161.
- advowson and tithes, *ib.*
- next presentation, 162.
- leaseholds, discharged from rent, *ib.*
- in consideration of a certain sum, and of release of all breaches, 163.
- underlease and of rent, *ib.*
- ship or shares of ship, *ib.*
- seams of coal, consideration to be paid by instalments, 164.
- mortgage debt, *ib.*
- annuity, 165.
- goods and chattels, 166.
- licence to use invention, 247.
- copyright, 166.
- dower, 191.
- consideration to be paid by bills of exchange, 167.
- on behalf of the king, 168.

CONTRACT FOR PURCHASE—(*continued.*)

by copartners, 168.
subject to incumbrances, *ib.*
and a right of repurchase, 170.
rents, 169.

Note. *On reciting Contracts for Purchase, 157, (b)*

CONVEYANCE,

agreement to convey and assign freeholds and leasehold, 81.
to make new, and join in confirming same, 171.
by persons interested in purchase money to join in, 172.
heir to join in, *ib.*
on marriage to convey estates, and pay off mortgage, *ib.*
to reconvey freeholds to be held as part of partnership stock, in the nature of personality, 173.
join in, without prejudice to interest in money, *ib.*
to remove doubts, 174.
supply evidence, *ib.*
for mutual, *ib.*
in consideration of indenture already prepared to convey, 176.
that by indentures already prepared, freeholds and leaseholds are intended to be conveyed, 175.
desire of, to uses after declared, 176.
that infants are made parties to convey by custom of gavel kind, *ib.*
that conveyance, surrender, and payments were not made as directed by will, 177.
that no conveyance hath been made pursuant to contract, *ib.*
sale and, *ib.*, 177.
by bargain and sale, 136.
covenant to stand seised, 178.
lease and release, 241.
lease and release and fine, 242.
and recovery, 243.
assignment, 244.
in pursuance of act of Parliament, 245.
mesne and ultimate conveyances, *ib.*
entirety of estates intended to be conveyed, but that alienors were entitled to one third only, 243.

COPYHOLD,

covenant to surrender, 394.
surrender of, in court, 395.
 out of court, *ib.*
bill to enforce admittance to, 71.
admittance of trustee to, 70.
 as tenant in fee to, *ib.*
 in tail, *ib.*
contract for enfranchisement of, 194.
enfranchisement of, 196.

COPYRIGHT,

contract for purchase of, 166.

COUNSEL,

approval of title by, 104.

COVENANT,

to stand seised, 178.
surrender copyholds, 179.
levy fine, 203.
agreement to covenant that infant mortgagee shall execute
 when of age, or when ordered by Court of Chancery, *ib.*
to covenant for production of title deeds, 185, 186, 187.
to indemnify against loss of, 216.

CURTESY,

title by the, 180.

D.**DEATH,**

unmarried, 180.
without issue, *ib.*
of one of cestuis que vie, 181.
 intestate, leaving coheiresses, *ib.*
 testator, without revoking will, *ib.*
mortgagee, intestate as to estates in mortgage, *ib.*
trustee, leaving cotrustee surviving, 182.
 surviving trustee, intestate as to trust estates, *ib.*
by shipwreck, *ib.*

DEBENTURE,

certifying subscription and title to tontines, 183.

DEBT,

- for goods sold and delivered, 183.
- scheduled, 184.
- proof of, 135.
- agreement to accept composition for, 154.
 - for gradual liquidation of, 156.
 - to assign debt, 184.
 - leaseholds to pay debts, *ib.*
- judgment in action of, 230.

DEBTOR. *See Insolvent Debtor.*

DECREE, 388.

- of foreclosure, 385.
- directing commission of partition to issue, 312.
- declaring will well proved, ordering trusts to be executed, and directing account, 351.

DEED,

- poll, 184.
- indenture *inter partes*, 185.
- agreement to covenant for production of, 185, 186, 187.
 - to indemnify against loss of, 216.
- delivery of, as an escrow, 187.

Note. On the right of purchaser to Title-Deeds, 185, (b)

DEPOSIT,

- payment of, 123.
- of title deeds as an equitable security, 296.

DESCENT. *See Heirship.*DEVISE. *See Will.*

- by residuary clause of will, 444.
- that will did not contain any devise of estates in mortgage, 445.
- lapsed, 446.
- agreement to put an end to doubts as to effect of, 448.

DISCLAIMER,

- desire to disclaim trusts, 188.
- deed of, 189.

Note. On express and implied Disclaimer, 188. (d)

DIVIDEND,

- receipt of, 135.

DOUBTS,

agreement to join in conveyance to remove, 174.
to put an end to, as to effect of devises, 448.
execute conveyance to remove, as to the validity
of release, 362.

DOWER,

title to, under 3 & 4 W. IV. c. 155, 189.
at common law, 190, 191.
request and agreement to assign, *ib.*
contract for purchase of, *ib.*
agreement to exonerate lands from, *ib.*
to indemnify purchaser against, *ib.*
accept annuity in lieu of, 192.
declaration by deed to prevent, *ib.*
by will to prevent, *ib.*
uses to prevent, 436.
release of, 193.

Notes. *On the Dower Act*, 190, (e), (f), 192, (g),
193, (a)

E.

EJECTMENT,

action in, 64.
judgment in action in, 65.

ENFRANCHISEMENT,

contract for, 194.
deed of, 196.

Note. *On Enfranchisement of Copyholds*, 194, (b)

ESCROW,

delivery of deed as, 187.

EXCHANGE,

agreement for, 198.
to pay sum of money for owelty of, 199.
for release of warranty, 200.
deed of, 199.
power of, 345.

Note. *On Exchanges at Common Law and under Statute*, 198, (c)

EXECUTION,

that plaintiff became entitled to, 229.
of writ, 454.

EXECUTORS. *See Probate.*

appointment of, 442.

revocation of appointment of, and nomination of substitute, 443.

EXONERATE,

agreement to apply a certain sum in reduction of mortgage debt, and to exonerate the purchased estates from the residue, 98.

to exonerate lands from dower, 191.

EXTENT,

in chief, 450.

second degree, 451.

aid, *ib.*

that extent hath not been amoved, *ib.*

F.**FELO DE SE,**

inquisition finding the person of, 200.

the land of, 201.

memorial of the legatees of, *ib.*

recommendation to the crown to grant forfeited property of, 202.

FEOFFMENT,

and livery of seisin, 202.,

FIAT OF BANKRUPTCY, 131.**FINE,**

covenant to levy, 203.

levied in pursuance of covenant, *ib.*

levied, but no uses declared, *ib.*

conveyance by, 204.

desire to avoid, 205.

Note. On Avoiding Fine, 206, (e)

FORECLOSURE,

bill and decree of, 384.

FREIGHT,

agreement to let ship to, 206.

FURTHER CHARGE, 294.**G.****GAVELKIND,**

coheirship in, 209.

that infant is made party to convey at fifteen by custom of, 177.

GRANT,

of advowson, 73.

annuity, 86.

GUARDIAN,

appointment of, by infant, 207.

order of court, 208.

will, *ib.*renunciation of office of, *ib.***H.****HEIRSHIP,**

and intestacy, 209.

co-heirship in gavelkind, *ib.*of coparceners, *ib.*in tail, *ib.*

descent of fee now vested in heiress or husband, 210.

of fee subject to mortgage, *ib.*legal estate in part of certain estates, *ib.**Note. On Proving Pedigrees*, 474.**I:****INCLOSURE,**

expediency of, 211.

act of, appointing commissioners, 212.

allotment under act of, 213.

that award did not distinguish the titles and estates in respect of which allotments were made, and that it is expedient to supply such omission by act of Parliament, 214.

certificate of commissioners under inclosure act as to expenses, 215.

Note. On Allotments under Inclosure Acts, 212, (a)

INDEMNITY,

agreement on sale of estate to give bond of, 145.
to demise lands as an indemnity against rent-charge, 218.
indemnify purchaser against dower, 191.
against defects of title, 217.
against rent and covenants, 218.
on account of loss of title-deeds, 216.
upon being indemnified to enforce securities in order to relieve sureties, 217.

Note. On framing Indemnities, 219, (a)

INDUCTION,

of rector, 226.

INFANT,

minority, 75.

on marriage, *ib.*

made party to execute when of age, 74.

that heir at law of mortgagee is an infant, and is to execute when adult or ordered by the court, 219.

reference to master to inquire whether infant be a trustee within the 1 W. IV. c. 60, 219.

report of Master finding infant a trustee within the act, 220.

order of Court confirming report, and directing infant trustee to convey, *ib.*

that infant trustee was directed to convey, 221.

INQUISITION,

finding person of *felo de se*, 200.

lands of *felo de se*, 201.

lunacy, 257.

INSOLVENT DEBTOR,

application for discharge under the Insolvent Debtors' Act, 221.

that court adjudged him entitled to the benefit of the act, 223.

conveyance by, to provisional assignee, 222.

by provisional assignee to permanent assignee, 223.

INSOLVENT DEBTOR—(continued.)

discharge of, 225.
assignment to and from provisional assignee of, *ib.*
resolution of creditors to sell real estates of, *ib.*

Note. On the Title of the Assignee to Insolvent's Estates, 224, (c)

INSTITUTION,
of rector, 226.**INSURANCE,**

policy of, against fine, 330.
of ship, 331.
upon life, 333.
agreement to effect assurance upon life for better securing payment of mortgage money and interest, 331.
upon treaty for marriage to assure life and assign policy to trustees, *ib.*
to pay premium and stand possessed of policy upon trust, 333.
obtainment of policy of, 332.

Note. As to title to Bonuses under settlement of policy, ib, (b)

INTEREST.

agreement to convert interest into principal, 256.
due, 255.

INTESTACY. *See Administration.*

leaving one child only, 227.
as to real estates, *ib.*
trust estates, *ib.*
mortgaged estates, 228.

Note. As to Evidence of Intestacy, 227, (d)

INVENTION,

licence to use, 247.
contract for licence to use, *ib.*

ISSUE,

one child only, 228.
of marriage one son only, now an infant, *ib.*
death without, *ib.*

J.**JOINTURE,**

power to, 376.
limitation of rent-charge by way of, 437.

JUDGMENT,

in action in ejectment, 65.

of debt, 230.

on cognovit, 153.

bond, 229.

warrant of attorney, 230.

that plaintiff obtained judgment and became entitled to execution, 229.

agreement to assign, 230.

to satisfy, *ib.*

satisfaction of, 231.

L.**LEASE,**

agreement for perpetual renewal of, 362.

renewal of, at the accustomed times, 363.

that lease was obtained by virtue of the tenant-right of renewal, 406.

Note. As to Tenant-Right of Renewal, 484.

contract for, mortgagor consenting to join, 231.

agreement to become party in order to license assignment, 235.

Note. On Conditions against Alienation, 236, (i)

licence to lease copyholds, 232.

Note. As to Licence to Lease copyholds, ib. (g)

for years, subject to rent and covenants, 232.

renewable for lives, 234.

for a year, as recited in release, 137.

and actual entry, 233.

Note. Mr. Butler's Opinion on conveyances by Corporations, ib. (h)

mesne and ultimate assignments of, 237.

expediency of vesting in trustees by act of Parliament a power of leasing, 238.

power to grant building leases, *ib.*

leases at rack-rent, 241.

title of lunatic to lands intended to be leased, 259.

order of Court to inquire as to expediency of, *ib.*report certifying expediency of, *ib.*

LEASE—(continued.)

order confirming report, and enabling committees to grant,
260.
approval of, by master, 261.

LEASE AND RELEASE,

conveyance by, 241.
by fine and, 242.
recovery and, 243.
assignment and, 244.
in pursuance of act of Parliament, 245.
mesne and ultimate conveyances by, *ib.*

Note. Mr. Butler's Opinion on Conveyances by Lease and Release, 233, (h)

LETTER OF ATTORNEY,

to receive purchase-money and execute conveyances, 246.
money assigned and give effectual discharges, *ib.*

LETTERS PATENT,

licence to use invention given by, 247.
agreement to become partners in, 248.
assignment of, *ib.*

LICENCE,

to use invention, 247.
contract for, *ib.*
to demise copyholds, 231:

Note. On Licence to Lease copyholds, 232, (g)

agreement to become party for the purpose of licensing
assignment, 235.
to assign, *ib.*

Note. Of the effect of Licence to Alien, 236, (i)

LIMITATIONS. *See Uses.***LIVERY OF SEISIN,** 202.**LOAN,**

application for, 249.
to effect purchase, 250.
discharge mortgage, *ib.*
pay portions, 343.
for further, 252.
agreement to advance loan in certain proportions, 250.

LOAN—(continued.)

- agreement to discharge mortgage, and advance loan to trustees, 251.
 - to advance loan, mortgagor covenanting to obtain order for infant to convey, 254.
 - convert interest into principal, 256.
- advanced on joint account, payable on death of one to survivors, 254.
- title to, 255.
- due, *ib.*
- and interest due, *ib.*
- that principal and interest exceed the value of mortgaged estate, 256.
- that loan was the proper money of the testator, 299.
- default in payment of, 300.

LOSS,

- of release and assignment, 256.
 - assignment of term, 257,
 - bill of exchange, 138, 139.

LUNACY,

- writ *de lunatico inquirendo*, and inquisition finding, 257.
- reference to Master as to appointment of committees, 258.
- report certifying fit persons for committees, *ib.*
- order confirming report, and appointment of committees, *ib.*
- title of lunatic to estate intended to be demised, 259.
- reference to inquire as to expediency of *lease*, *ib.*
- report certifying expediency of lease, *ib.*
- order confirming report, and enabling committee to grant lease, 260.
- approval of lease by Master, 261.
- reference to inquire as to the expediency of a *sale* of lunatic's estate, 262.
- report certifying expediency of sale, *ib.*
- confirmation of report, and order for sale, 263.
- sale by auction before Master, 264,
- report of sale, 265.
- confirmation of report, *ib.*
- order for payment of purchase-money, and execution of conveyance, *ib.*
- payment of purchase-money, 267.

LUNACY—(continued.)

of *mortgagee*, though not found by inquisition, 268.
desire to discharge mortgage, *ib.*
reference as to, of *mortgagee*, 269.
report finding *mortgagee* lunatic, 271.
confirmation of report, and nomination of substitute to convey, 272.
balance due on mortgage after deducting expenses, 274.
that *nominee* has entered into security, 275.
that *trustee* became of unsound mind, *ib.*
reference as to appointing new *trustee*, *ib.*
report approving of and appointing new *trustee*, 276.
confirmation of report, *ib.*
reference as to, of *trustee*, *ib.*
report finding *trustee* lunatic, 277.
confirmation of report, and direction to convey, 278.
approval of conveyance by *Master*, 279.
grant of letters of *administration* to committee, *ib.*
report finding next of kin of intestate, and that lunatic *administrator* had possessed himself of certain property, *ib.*
confirmation of report, and direction to pay distributive shares, 280.
desire on receiving distributive share to execute release and indemnity, 281.

M.**MARRIAGE**,

agreement for, 282.
solemnization of, *ib.*
intermarriage and coverture, *ib.*
reference to *Master* to inquire as to the suitableness of proposed marriage for ward, *ib.*
report in favour of proposed marriage, stating proposals for settlement, 283.

MARRIAGE SETTLEMENT, 374.**MASTER IN CHANCERY**,

approval of security by, 105.
 of conveyance by, 104.
 lease by, 261.
 copy of conveyance by, 105.
reference to, 219. *See Reference.*
report of, 220. *See Report.*

MERGER,

intention to effect, 286.
agreement to merge term, if not already merged, *ib.*
 in order to discharge estate for portions, *ib.*
of term, 287.
that under circumstances of title, term did not merge, *ib.*

MINORITY, 75.

on marriage, *ib.*

MORTGAGE. *See* *Loan, Payment.*

of freeholds and assignment of term, 288.
 with trusts for sale, 290.
 in consideration of transfer of stock, *ib.*
Note. As to Mortgage in consideration of Transfer of Stock, 292, (a)
of freeholds for term, and subject thereto a resettlement
 of estate, *ib.*
leaseholds, subject to rent and covenants, 293.
further charge, 294.
proviso for redemption, and for reduction of interest if
 regularly paid, 295.
equitable, 296.
transfer of, 297.
agreement to assign mortgage to trustees, 34.
 to discharge, 300.
 part of, *ib.*
expediency of consolidating mortgages by act of Par-
 liament, 302.

N.**NAME. *See Surname.*****NATURALIZATION, 303.**

*Note. Naturalization and Denization distinguished
and described, ib. (c)*

O.**ORDER OF COURT,**

of review, 133.
chancery, 118. *See Infant, Lunacy, &c.*

ORDER OF COURT—(continued.)

of king's bench, 117.
at assizes, *ib.*
 nisi prius, 115.
 nisi prius in K. B. 116.

P.**PARCELS,**

identity of, and desire of conveyance by modern description, 304.
confusion of boundaries of, 305.
Note. As to determining Boundaries by act of Parliament, ib. (e)
that parcels from their locality are a desirable purchase for the king, 306.
acreage of, *ib.*
commons and commonable rights, 307.
 and inclosures, *ib.*
erection of buildings since conveyance, *ib.*
Note. On describing Parcels, 304, (d)

PARTITION,

agreement for, 308.
division of estate, and agreement to pay sum of money for owelty, *ib.* 310.
articles of agreement for, but no conveyances executed, 311.
decree directing commission of, 312.
commission of, 313. See *Manners v. Charlesworth*, 1 M. & K. 331.
certificate of commissioners, 314.
order confirming certificate, 316.
expediency of completing partition, *ib.*
power of, 348.

PARTNERSHIP, 317.

agreement to enter into, *ib.*
 in letters patent, 248.
 to dissolve, 320.
 execute mutual releases, *ib.*
intention to enter into, capital to be advanced by one partner only, who is to be indemnified from losses, 318.
that one partner intends to retire, and with the consent of

PARTNERSHIP—(*continued*).

the others, hath contracted for the sale of his interest, 319.
desire to close accounts of, 320.
settlement of accounts of, 321.
that accounts of, were made up before the death of partner, *ib.*

PAYMENT,

of deposit, 123.
composition, 155.
dividend, 135.
purchase-money, 267, 321.
Note. On the effect at law and in equity of a Receipt for the Purchase-Money, 322, (a)
order of Court to pay purchase-money into bank, 323.
pursuant to order, *ib.*
of money in certain proportions, *ib.*
for maintenance, 341.
request of payment of mortgage debt, 323.
desire to pay off mortgage, 324.
default in payment of principal, *ib.*
nonpayment of money within the time directed, *ib.*
of portions, 342.
of money to trustees as a provision for daughter, 329.
annuity, 325.
principal and interest, *ib.*, 326.
secured by bond, and division of same according to the rights of the parties, 325.
part of mortgage money, 326.
and all interest, *ib.*
interest, *ib.*
of portions, 341.
all sums by way of interest upon stock, 327.
agreement to retain value of stock in payment of loan, *ib.*
to pay money to trustees, 328.
covenant for payment of interest, 329.
reduction of debt by receipt of rents, 327.
application of part of rents in payment of debts, 328.
for loan to pay portion, 343.

PEDIGREE, 208.

Note. On Proving Pedigrees, 474.

PETITION,
to the Court of Review, 133.
Chancery, 219, 269.

PIN-MONEY,
appointment anticipating, 93.

PLEADINGS, 65, 386.

POLICY. *See Insurance.*

PORTIONS,
agreement to advance, 334.
to merge term in order to discharge estates from, 342.
power to charge estates with, 335.
appointment of, 340.
payment of interest of, 341.
nonpayment of, 342.
application for loan to pay, 343.

POWER. *See Appointment.*
to appoint umpire, 118.
uses, 344.
protector, 355.
new trustees, 421.
revoke old, and limit new, uses, 423.
jointure, 376.
grant building leases, 238.
leases at rack rent, 241.
charge estates with portions, 335.
expediency of giving trustees a power of leasing, 238.
of sale and exchange, and of revocation and new appointment, 345.
survivorship of, 348.
non-exercise of, *ib.*
desire to exercise, *ib.*, 349.

PRESENTATION,
deed of, 349.

PROBATE,
proxy of renunciation of, 349.
renunciation of, and desire to disclaim, 350.
of will, *ib.*
and codicil, 350.

PROBATE—(continued)

by two executors only, 351.

Note. Of Proving Wills in cases of terms of years, 467.

per testes in chancery, ib.

decree declaring will proved, *ib.*

that paper was propounded, but not admitted to, 447.

Note. Of the Admissibility of Papers to Probate, 487.

PRODUCTION,

agreement to covenant for, of deeds, 185, 186, 187.

Note. On the right of purchaser to Title-Deeds, 185, (b)

PROMISSORY NOTE, 353.**PROSECUTION,**

agreement to enter into an association for prosecution of felons, 353.

PROTECTOR,

appointment of, 354.

power to appoint, 355.

desire to be discharged from office of, *ib.*

to appoint new, 356.

relinquishment of office of, and appointment of new, *ib.*

consent of, *ib.*

deed of absolute consent of, 357.

qualified consent of, 358.

Note. As to the Consent of Protector to the disposition of tenant in tail, 357, (b)

PURCHASE. *See Contract for Purchase.***PURCHASE-MONEY.** *See Payment.***R.****RECEIPT.** *See Payment.*

Note. On the effect at law and in equity of a Receipt for the Purchase-Money, 322, (a)

RECEIVER,

power to appoint, 358.

agreement to appoint, 359, 360.

RECOVERY, 360, 361.

REFERENCE,

to Master to inquire whether infant be a trustee within the 1 W. IV. c. 60, 219.
as to appointment of committees, 258.
expediency of lease, 259.
sale, 262.
lunacy of mortgagee, 269.
trustee, 276.
appointing new trustee, 275.
suitableness of proposed marriage, 282.
arbitration, 105. *See Arbitration.*

REGISTRY,

certificate of, 142.

RLEASE,

lease and, 241.
agreement to execute conveyance to remove doubts as to validity of, 362.
to release in equity certain lands from rent-charge, 365.
execute release of all claims, 155.
for mutual release of warranty, 200.

RENEWAL,

agreement for perpetual, 362.
of lease at the accustomed times, 363.
that lease was obtained by virtue of the tenant-right of renewal, 406.
Note. As to Tenant-Right of Renewal, 484.

RENT,

agreement to indemnify purchaser against, 218.
apportion, 92.

Note. On Apportionment of Rent, 470.

RENT-CHARGE,

contract for, 363.
for sale in consideration of, *ib.*
that estate is subject to, 364.
that estate charged has been sold, and agreement to invest part of proceeds in stock, and pay dividends in lieu of, 367.
limitation of, by way of jointure, 437.

RENT-CHARGE—(continued)

agreement to demise lands as an indemnity against, 218.
to release in equity, 365.

Note. On the operation of a Release of part of estate from Rent-Charge, ib. (d)

RENUNCIATION. See Disclaimer.

proxy of, 349.
of probate, 350.
guardianship, 208.

REPORT,

of master finding infant a trustee within the 1 W. IV.
c. 60, 220.
certifying expediency of lease, 259.
sale, 262.
fit persons for committee, 258.
of sale, 265.
finding mortgagee lunatic, 271.
trustee lunatic, 277.
approving of and appointing new trustee, 276.
finding next of kin of intestate, and that lunatic administrator had possessed himself of certain property, 279.
in favour of proposed marriage, stating proposals of settlement, 283.

REPUBLICATION,

of will by codicil, 444.

REVOCATION,

of appointment of executor, and nomination of substitute, 443.
power to revoke old, and limit new, uses, 423.

S.**SALE. See Contract for Purchase.**

resolution of creditors to sell estates of insolvent debtor, 225.
by auction, 123, 124.
before Master, 264.
that property was put up to, but bought in, 125.

SALE—(continued.)

order of Court directing, 369,
in pursuance of order, *ib.*
pursuant to power, *ib.*
of lands, and investment of proceeds in the purchase of
other property, 370.
expediency of, *ib.*
that sale cannot be effected without the aid of Parliament,
372.
of stock, 382, 383.

SEISIN,

livery of, 202.

SEPARATION,

agreement between husband and wife for, 372.
on separation to allow wife an annuity, 373.
to assign paraphernalia to wife's trustees, 374,

SETTLEMENT,

in contemplation of marriage, 374.
pursuance of articles, 376.
and agreement for, 375.

SHIP,

agreement to assign, 83.
to let ship to freight, 206.
bill of sale of, 141,
of shares of, *ib.*

STOCK,

title to, 378.
dividends of, *ib.*
investment in, and agreement to declare trusts of, 379.
agreement to transfer, *ib.*
purchase of, pursuant to agreement, 380.
transfer of, 381.
sale of, 382, 383.

SUBMISSION. *See Arbitration.*

deed of, 112.

Note. On reciting Submission in award, 113, (e.)

SUIT,

bill of complaint, 383.
revivor, 385,
supplement, *ib.*

SUIT—(continued.)

- agreement to defend, 384.
- to dismiss, 386.
- abatement of, 385.
- order in, 387. *See Order.*
- report in, *ib.* *See Report.*
- decree, 388. *See Decree.*

SURETY,

- agreement upon being indemnified to enforce securities against principal in order to relieve, 217.
- to enter into covenant as, 388.
- to become, *ib.*

SURNAME,

- direction by will to assume testator's name and arms, 388.
- assumption of name and arms accordingly, 390.
- act of Parliament to enable devisee to assume testator's, 391.
- letters-patent enabling one to assume arms, &c. 392.
- Note. On Assuming Surnames, 389, (a)*

SURRENDER, 393.

- contract for, 392.
- agreement to surrender term in order that premises may be discharged from portions, 393.
- covenant to, 394.
- release and fine of freeholds, covenant to surrender copy-holds, and surrender accordingly, 395.
- in court, *ib.*
- out of court, *ib.*
- of term created to secure pin-money, 94.

T.**TERM OF YEARS,**

- that estate is subject to, 396, 397, 398.
- desire that term should be assigned, 399, 400.
- assignment of, *ib.*
- mesne and ultimate assignments of, 396.
- cesser of, 402.

TITLE,

- approval of, 104.
- objections to, 419.

TITLE—(continued.)

- defect of, 419.
- to freeholds, 403.
 - in unequal, undivided shares, *ib.*
 - under will, subject to incumbrances, 404.
- to copyholds, *ib.*
 - leaseholds, 405.
 - subject to rent and covenants, *ib.*
 - as next of kin to term, *ib.*
 - under a lease subsequently renewed by virtue of the tenant-right of renewal, 406.
 - to freeholds and leaseholds, subject to rent and covenants, *ib.*
 - freeholds subject to mortgage, and to leaseholds subject to rent and covenants and mortgage, 407.
 - freeholds and chattels, 408.
 - freeholds, copyholds, and leaseholds not distinguishable, subject to incumbrances, *ib.*
 - as tenant for life, 409.
 - under settlement, *ib.*
 - under will, 410.
 - heir, *ib.*
- to life-estate, with remainder in tail, 411.
- as tenant in tail under deed, *ib.*
 - under will, *ib.*
- to estate-tail, and desire to enlarge same into a fee-simple, *ib.*
 - reversion of freeholds, 412.
 - of copyholds, *ib.*
 - ultimate remainder in fee, 413.
- possession and receipt of rents of settled estates, *ib.*
- of the king to advowson, 414.
 - bishop to advowson, *ib.*
 - dean to rectory, *ib.*
 - to rectory and tithes. *ib.*
- to lordship, vicarage, and great tithes, 415.
- of prebendary to patronage of vicarage, and to tithes, *ib.*
 - the king to lordship of manor, 416.
 - archbishop to lordship of manor, *ib.*
- to rights of common, *ib.*
 - shares of mortgage-money, *ib.*
- as administrator to mortgage-money, 417.

TITLE—(*continued.*)

under assignment to share of legacy, 417.
claim of, to legacy and agreement to compromise same, *ib.*
to ship, 418.
shares in ship, *ib.*
agreement to complete contract, vendor covenanting to perfect, 419.

TRANSFER,

agreement on marriage to transfer stock, and transfer accordingly, 379.
of stock, 381.
mortgage, 297.

TRUSTEE,

reference to Master to inquire whether infant be a trustee within 1 W. IV., c. 60, 219.
report of Master finding infant a trustee within the act, 220.
order of court confirming report, and directing infant trustee to convey, *ib.*
that infant trustee was directed to convey, 221.
power to appoint new, 421, 423.
desire of, to be discharged from trusts, and agreement to appoint new, 426.
to exercise power of appointing new, 427.
appointment of, *ib.*, 428.
death of old, and appointment of new, *ib.*
acknowledgment of trusteeship, *ib.*
that estates are or may be vested in assignor as, 429.
agreement to pay money to, upon such trusts as will best correspond with uses of hereditaments, 430.

TRUSTS,

agreement to pay money to trustees upon such trusts as will best correspond with the uses of hereditaments, 430.
declaration of, as to moieties, *ib.*
to raise pin-money, *ib.*
portions, 433.
fines for renewal, 431.
annual sum for maintenance, *ib.*
to permit rents to be received by next remainderman, 432.
invest proceeds of sale in the purchase of hereditaments to be settled to uses of settlement, 433.

U.

UMPIRE,

power to appoint, 118.
appointment of, 119.

Note: On the Appointment of Umpire, 106. (c).

USES,

use upon use, 435,
power to revoke old, and limit new, 423.
declaration of, to prevent dower, 436.
 by reference, *ib.*
 in strict settlement, 437.

V.

VALUATION,

and survey of estates, 438.
of buildings, *ib.*
timber, 439.
copartnership property, *ib.*

W.

WARRANT OF ATTORNEY,

to secure payment of annuity, 85.
 of loan, 440.
judgment entered up on, 230.

Note. As to the Relation of Judgments, 440, n. (b)

WARRANTY,

agreement for mutual release of, 200.

WILL,

of freeholds, 440.
personalty, 442.

Note. On Wills of Realty and Personality, 441. (c)

appointment of executors by, 442.
revocation of appointment of executor, and nomination of
 substitute, 443.
codicil to, *ib.*
and codicils, one of codicils devising real estate, *ib.*

WILL—(*continued*)

- that codicil amounted to a replication of, 444.
- codicil not affecting will of realty, *ib.*
- devise by residuary clause of, *ib.*
- that will did not contain any devise of estates held in mortgage, 445.
- desire to devise estates purchased since the execution of will, *ib.*
- lapsed devise, 446.
- verbatim*, and agreement to confirm, *ib.*
- desire to effectuate supposed intentions of testator, 447.
- that paper was propounded, but not admitted to probate, *ib.*

Note. On the Admissibility of Papers to Probate, 487.

- agreement that paper shall be considered as testamentary, 448.
- to put an end to doubts as to effect of devises, *ib.*
- renunciation of probate of, 349, 350.
- probate of, *ib.*
 - of will and codicil, *ib.*
 - by two executors only, 351.
 - per testes* in chancery, *ib.*
 - decree declaring will well proved, *ib.*

WRIT,

- de lunatico inquirendo*, 257.
- extent in chief, 450.
- in aid, 451.
 - chief in the second degree, *ib.*
- fieri facias*, 452.
- execution of, 454.
- sale under, *ib.*

THE END.

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